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ATTORNEY'S OFFICE



WESTERN DISTRICT
OF MICHIGAN



FIRST TERM REPORT

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Margaret M. Chiara

United States Attorney





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Introduction

The Western District of Michigan (WDMI) has the largest population of Native Americans east of the Mississippi River. Eleven of the 12 federally-recognized Tribes in Michigan reside in the WDMI. Approximately 75% of the case referrals from Indian Country are violent crime prosecutions. Vigorous prosecution of violent crime in Indian Country, particularly cases involving vulnerable victims, is a priority of the United States Attorney.

A. Purpose of the First Term Report

In order to account for effort expended to improve the quantity and quality of service to Indian Country in her first term, the United States Attorney asked participants to provide specific categories of information.

The report is intended to be an informal inventory of collective effort from the perspective of the United States Attorney's Office. We plan to issue individual annual reports during the next term.

B. Western District of Michigan Tribes

The following is a list of the eleven federally-recognized Tribes in the WDMI, accompanied by a short synopsis of each. Between 58,000 and 65,000 of the nation's 2.5 million Indians are estimated to live in Michigan. Many believe that the number could be twice as high.

1. Bay Mills Indian Community

The Bay Mills Indian Community includes descendants of the Anishinabek Ojibwa, who lived for hundreds of years on the shores of Lake Superior. They are members of the historical band of Chippewa referred to as the Sault Ste. Marie Band. The Bay Mills Indian Community is located in Brimley, Michigan approximately 25 miles west of Sault Ste. Marie. The Tribes service area consists of Chippewa county. The Tribe's reservation was officially established by an Act of Congress on June 19, 1860. The reservation is divided into two separate tracts of land: the majority of the land lies northwest of Brimley, while the remainder is located on Sugar Island in the St. Mary's River. The Tribe has acquired additional lands, increasing its total to approximately 3,500 acres. The current tribal enrollment is approximately 1,500.



2. Grand Traverse Band of Ottawa and Chippewa Indians

The Grand Traverse Band of Ottawa and Chippewa Indians was the first Tribe in the United States to successfully petition for federal recognition under the Department of the Interior's 1978 regulations (codified at 25 C.F.R. Part 83). The Tribe has a six-county service area consisting of Antrim, Benzie, Charlevoix, Grand Traverse, Leelanau and Manistee counties. It currently owns approximately 1,200 acres of land located throughout its service area. Most of these lands are held in trust by the United States. There are approximately 3,700 enrolled members.

3. Hannahville Indian Community

During the 1830s, the majority of the Potawatomi were removed to the territory of Kansas. Some tribal members escaped and made their way up into Canada, but a small band settled near the Cedar River in Michigan's Upper Peninsula. The Hannahville-Potawatomi Indian Community is descended from that band and received federal recognition in 1913. At that time, a reservation of approximately 4,000 acres was created for the Tribe in Menominee and Delta counties. Today, the Tribe owns nearly 5,000 acres in these two counties. There are approximately 800 tribal members.

4. Keweenaw Bay Indian Community

The Keweenaw Bay Indian Community is located on the L'Anse Reservation, which is along the shores of Lake Superior. The towns of Baraga and L'Anse are located on the reservation. Keweenaw Bay Indian Community has a service area consisting of Baraga, Houghton and Ontonagon counties and an enrolled membership of about 3,500.

5. Lac Vieux Desert Band of Lake Superior Chippewa Indians

The Lac Vieux Desert Band of Lake Superior Chippewa Indians takes its name from the area where the Tribe has always lived. Initially, the Lac Vieux Desert Band was recognized by the federal government as a part of the Keweenaw Bay Indian Community, despite the fact that the Lac Vieux Desert Band has always maintained its presence in the Watersmeet area. In 1988, the Lac Vieux Desert Band received independent recognition as a Band. The Tribe's land base is approximately 1,100 acres. The tribe has a tri-county service area consisting of Gogebic, Iron, Ontonagon counties. Current tribal enrollment is 366.



6. Little River Band of Ottawa Indians

The Little River Band of Ottawa Indians traces its roots back to the Grand River Bands of Ottawa Indians, who resided at Pere Marquette Village or "Indian Town" on the Mason County Reservation established by the 1855 Treaty of Detroit. Federal recognition of the Little River Band was reaffirmed on September 21, 1994. The Little River Band is comprised of nine of the 19 Grand River Bands of Ottawa Indians in Michigan that were signatories to the 1836 and 1855 Treaties. The Tribe's service area includes Lake, Manistee, Mason, Wexford, Ottawa, Newaygo, Oceana, Kent, and Muskegon counties. There are between 2,750 and 2,800 enrolled members.

7. Little Traverse Bay Band of Odawa Indians

The Little Traverse Bay Band of Odawa Indians is located near the Tribe's traditional villages in Emmet, Delta, and Charlevoix Counties. Federal recognition of the Tribe was reaffirmed on September 21, 1994. The tribe has a defined reservation and a service area consisting Emmet, Charlevoix, and Cheboygan counties. There are 3,783 enrolled members.

8. Match-E-Be-Nash-She-Wish Band of Potawatomi Indians

The Match-E-Be-Nash-She-Wish Band of Potawatomi Indians was one of the signatory bands to the Greenville Treaty of 1795, and takes its name from a former war chief of the Tribe. The Tribe is referred to generally as the Gun Lake Band in reference to the lands where the majority of the tribal members reside. The Tribe's original reservation was established by the treaties of 1807 and 1821, successor treaties to the Greenville Treaty. The Tribe received reaffirmation of federal recognition in 1998 and has a designated five county service area consisting of Allegan, Barry, Kalamazoo, Kent, and Ottawa counties. The Tribe currently does not have any trust land but it purchased property in 1999 and is the process of having it taken into trust. The Tribe's current enrollment is 296.

9. Nottawaseppi Huron Band of Potawatomi

The Nottawaseppi Huron Band of Potawatomi is the remnant of the Potawatomi who hid from soldiers, or escaped, during the Indian removal of the 1830s. In 1839, the United States Army forcibly relocated the Tribe to Indian Territory (Oklahoma and Kansas), but some of the tribal members fled to Illinois. They later returned and purchased 80 acres of land, and they convinced the State of Michigan to donate the remaining 40 acres of what is now the Pine Creek Reservation in Athens. The Tribe received its federal recognition in 1995 by an Act of Congress and has a designated seven county service area consisting of Branch, Calhoun, Kalamazoo, Barry, Allegan, Kent, and Ottawa counties. The Tribe has purchased an additional 79 acres of



farmland in Calhoun County that it is trying to have taken into trust. Tribal enrollment is estimated to be approximately 450.

10. Pokagon Band of Potawatomi Indians

The Pokagon Band of Potawatomi Indians is located near the Tribe's aboriginal lands in the St. Joseph River valley in southwestern Michigan and northern Indiana. The Tribe is made up of descendants of, and political successors to, the Potawatomi bands that were signatories to at least eleven treaties with the United States government. The Pokagon Band is the only Potawatomi band that negotiated the right not to be removed to the Indian territories. The Pokagon Band has maintained its existence since time immemorial, and was reaffirmed federal recognition by an Act of Congress in 1994. The Pokagon Band is the only tribe in the state of Michigan with a designated service area that crosses the borders of two states and consists of Allegan, Berrien, Cass, and Van Buren counties in Michigan; and Elkhart, Kosciusko, LaPorte, Marshall and St. Joseph counties in Indiana. There are approximately 2,778 enrolled members.

11. Sault Ste. Marie Tribe of Chippewa Indians

The Sault Ste. Marie Tribe of Chippewa Indians existed as a separate, identifiable tribal group long before contact with European settlers. In 1855, the United States government entered into a treaty with the Tribe, promising reservation lands throughout the northern Lower Peninsula and the Upper Peninsula – a promise that was never kept. In 1936, the Tribe applied for federal recognition, and recognition was finally achieved in 1972. In 1974, the federal government placed a small parcel of land near Sault Ste. Marie in trust for the Tribe, and other parcels near St. Ignace, Hessel, Manistique, and Christmas were later added. The Tribe has a seven county service area consisting of Alger, Chippewa, Delta, Luce, Mackinac, Marquette and Schoolcraft counties. The current tribal enrollment is 31,224.

C. United States Attorney's Office-Tribal Relations

The United States Attorney made tribal relations a high priority during her administration. The United States Attorney's Office (USAO) recognizes and respects the sovereign status of the federally-recognized Tribes, and it adheres to the principles of government-to-government relations when working with each sovereign nation.

Government-to-Government Meetings

The USAO has substantially improved communication and services with the Tribes in the past three years by collaborating with tribal leadership on matters of mutual interest and concern. The USAO's Tribal Liaison, who is a member of the Turtle



Mountain Band of Chippewa, is the USAO's primary point of contact with the eleven Tribes. He works with the United States Attorney and other members of the USAO staff to ensure that there is effective government-to-government communication with each sovereign nation.

The United States Attorney conducted annual government-to-government meetings with each of the Tribes. She traveled, along with members of the USAO staff, throughout the Upper and Lower Peninsulas with a delegation of representatives from various federal agencies to meet with tribal leaders from each of the eleven federally-recognized Tribes. Participants in these annual meetings included tribal chairs, tribal judges, prosecutors, advocates, police and social service directors, the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), and the United States Probation Office.

Historically, the purpose of the annual meetings was to promote dialogue and to improve the communication between the USAO and the Tribes on issues of mutual concern. Recently, the annual meetings have expanded to include training on issues of importance to the Tribes and the public safety of their members. Additional training provided to the various Tribes included domestic violence case protocols, full faith and credit, the non-Indian misdemeanor docket, report writing, search and seizure procedures for tribal police, anti-terrorism issues, and Project Safe Neighborhoods.

II. Western District of Michigan Initiatives

The WDMI instituted the following steps to revitalize its Indian Country practice, in order to significantly improve the quality and timeliness of both prosecution and victim-witness services to the Tribes.

A. Hiring and Assignment of Staff

In 1995, an attorney with extensive practice in the area of Federal Indian Law was hired to prosecute violent crimes in Indian Country and to be a liaison between the USAO and the federally recognized tribes in the WDMI. In 2002, the USAO refocused the WDMI's Indian Country practice, directing a major portion of the Tribal Liaison's time and talents to liaison work. The mission was clear: improve communication and coordination with the federally recognized Tribes in the area of law enforcement to more effectively address crime in Indian Country.

Through improved communication with the Tribes on a true government-to-government basis, the USAO sought to help the Tribes improve their communities and make them safer for their members. The Tribal Liaison was tasked with working with the Tribes on all aspects of their governmental infrastructures that dealt with law enforcement. By assisting in, for example, the development of cross-deputization



agreements, tribal law and order codes, and protocols to address specific types of crime, the Tribes in the WDMI are better able to effectively address violent crime in their communities. A tribal contact person increased the tribal governments' participation in the process. The WDMI is aggressively addressing crime in Indian Country on a partnership basis. The development of sound working relationships ensures that crimes are timely, and effectively addressed both at the tribal and federal levels.

In October of 2003, the United States Attorney appointed an experienced formerly-elected county prosecutor and nationally-recognized expert in the area of domestic violence as the WDMI Violent Crime in Indian Country Assistant United States Attorney (AUSA). The WDMI gained not only an experienced sex-crimes prosecutor, but also a professional trainer. In March of 2003, another former state prosecutor with significant experience prosecuting violent crimes and working with vulnerable victims joined the USAO staff in the WDMI Northern Division (the Marquette Branch Office), where five of the 11 Tribes are located. This AUSA also has experience establishing multi-disciplinary teams, which is an essential collaborative tool to effectively prosecute child sexual assault crimes. In 2003, the WDMI engaged an experienced victims advocate, whose primary assignment is Indian Country cases. In addition, AUSAs experienced in white collar crime prosecution have been assigned to Indian Country cases involving economic crimes.

B. Increased Federal Investigative Resources

The United States Attorney presented a convincing case to the FBI Special Agent-in-Charge (SAC) in Detroit concerning the lack of adequate federal investigators in Indian Country. As a result, FBI agents were reassigned to both the Marquette and Traverse City resident offices during 2003.

C. Streamlined and Centralized Case Intake Procedures

Indian Country cases were reviewed by the Deputy Criminal Chief in consultation with the other members of the Indian Country team: the Violent Crime in Indian Country AUSA, the Tribal Liaison, a paralegal specialist, and a member of the Victim-Witness Unit. This consultation took place at bi-monthly team meetings. The Indian Country team also met on an *ad hoc* basis when case intake decisions needed to be made more quickly, as in the case of most domestic violence referrals. These procedures have helped to ensure that the USAO case acceptance and declination decisions are sound, consistent, timely, and communicated to the Tribes.

D. Development and Implementation of Case Filing Checklist

In order to promote informed and accurate case intake decisions, a checklist containing a series of pertinent questions must be completed in addition to specified



reports and tribal membership documentation. The review of this information ensured that the USAO has jurisdiction over the defendant and the offense and prosecutors can carry their evidentiary burden. The checklist was developed with the assistance of federal and tribal law enforcement in 2003 and distributed in January 2004. It has proven to be an effective case analysis tool.

E. Renewal of Declined Cases

The Violent Crime in Indian Country AUSA reviewed cases previously declined to ensure that case declination decisions were justified. The AUSA reopened a child sexual assault case that had been declined, in part, because the young victims were too traumatized to testify. The perpetrator, Albert J. Kappell, was a previously convicted child sexual predator. There was no confession or medical evidence. The children were unable to testify. The jury was persuaded by testimony of a psychologist trained as a forensic interviewer admitted pursuant to Federal Rules of Evidence 803(4). The defendant was convicted of nine counts of sexual abuse committed against the girls, ages three and six. He was sentenced to life in prison.

F. Training for Tribal Law Enforcement

The WDMI hosted the Great Lakes Native American Conference for five federal districts in 2003. The conference focused on family and domestic violence in Indian Country. Also during 2003-2004, the Violent Crime in Indian Country AUSA toured Michigan presenting training on the Full Faith and Credit Clause, as it applies to the Violence Against Women Act and the enforcement of personal protection orders from other jurisdictions. Training was provided to tribal law enforcement on the importance of conducting lethality assessments. At that training, the USAO protocol for handling misdemeanor domestic violence crimes committed by non-Indians against Indians in Indian Country was reviewed. Refer to Section VI of this report for additional information on training initiatives.

G. Non-Indian Misdemeanor Docket

The USAO established, through the Central Violations Bureau (CVB), a non-Indian misdemeanor docket for Class A, B and C misdemeanor offenses. Tribal law enforcement officers were provided training on issuing CVB tickets to non-Indians who commit misdemeanor offenses against Native Americans in Indian Country.

The non-Indian misdemeanor docket has limited value, however, when applied to the number one violent crime in Indian Country – domestic violence. Tribal police were issuing CVB tickets to non-Indian perpetrators of misdemeanor domestic violence. By the time the WDMI was informed of these charges through the CVB, months had passed between the alleged assault and the notice of the defendant's initial



appearance. During this time, alleged offenders were not under the Court's supervision and were otherwise free to re-offend or pressure the victim to recant his/her story. Consequently, the USAO developed a separate protocol for handling misdemeanor domestic violence and other assaults committed by non-Indians against Indian victims on the reservations.

The new protocol requires tribal police to immediately contact a member of the Indian Country team whenever probable cause is established that a non-Indian has committed a domestic assault on an Indian. Together, the AUSA and tribal police work through the jurisdictional issues, elements of the offense, and a lethality assessment. If a felony offense is established by probable cause, or the misdemeanor offense was committed in the tribal officer's presence, an arrest is authorized. If, as in most domestic violence cases, the misdemeanor assault occurred outside the officer's presence, the USAO files a criminal information, generally within 24 hours of the alleged assault, and summons the defendant to court within days, so that the perpetrator is quickly placed under the court's supervision. In all domestic violence cases, the USAO seeks a no-contact order from the court, regardless of whether the defendant is detained or released on bond. Training has been provided to tribal law enforcement personnel on this newly-developed protocol.

H. Michigan State University College of Law American Indian Law Program

In the Fall of 2004, Michigan State University College of Law (MSU) initiated the first comprehensive American Indian Law Program in the Midwest. The Program provides law students with an opportunity to work with tribal governments regionally and nationally on policy-making decisions, research and infrastructure plans.

The USAO is working collaboratively with MSU to enable the Indian Law Program students to be exposed to real life work in the area of federal Indian law. The United States Attorney and members of her staff met with the Dean of the Law School and his staff to explore opportunities in specific areas where the USAO can provide a benefit to MSU and the students involved in the Indian Law Program. At that meeting, it was agreed that the USAO would collaborate with MSU on four specific areas.

1. Law Clerk Extern Program

The USAO will accept a qualified student each semester to serve as a law clerk in the Indian Country Unit. The student will work directly with the violent crimes prosecutor and tribal liaison on cases and other matters affecting the Tribes. Opportunities will be made available for the student to represent the United States in federal court at initial appearances, arraignments, and motion hearings. The law student will receive academic credit for participation in the externship.



2. Assistant United States Attorneys Participation in Indian Law Program

AUSAs will be available to assist with curriculum development for courses, seminars or conferences focusing on federal criminal jurisdiction in Indian Country. AUSAs, when available, will participate in events sponsored by the American Indian Law Program.

3. Instructing on Violent Crime in Indian Country

The USAO has a particular interest in informing law students about the prevalence of crimes of domestic violence, sexual assault and stalking in Indian Country. Lectures on these topics will be developed and presented throughout the school year.

4. *United States v. Michigan*

The USAO is currently involved in the historic, on-going litigation of the inland treaty rights of five of the federally recognized Tribes in the WDMI. The United States and these five Tribes are plaintiffs seeking recognition of that nature and scope of the Tribes' 1836 treaty rights to hunt, fish, and gather within the ceded tribal territories. The case has national significance and provides an excellent opportunity for a law student to gain first-hand knowledge of the complexities involved in litigating this type of case. This case offers an outstanding educational opportunity for the students enrolled in the program. The university is interested in organizing a seminar or event to feature this nationally significant case.

I. Multidisciplinary Teams in Indian Country

Under the leadership of the USAO, the Tribes have implemented a multi-disciplinary team (MDT) approach to combat child sexual abuse in Indian Country. A MDT is a group of representatives from a variety of disciplines or agencies that meet to discuss child abuse and neglect matters. Federal law requires that an MDT be utilized "when it is feasible to do so." A MDT in Indian Country may include tribal prosecuting attorneys, AUSAs, protective services workers, law enforcement representatives, mental health workers, school personnel, victim advocates, federal Victim/Witness personnel, FBI victim specialists and medical personnel. The goal of the MDT is to reduce trauma to the child victim. The MDT method also provides for the timely and effective detection, investigation and prosecution of child sexual assault cases, in that it proactively identifies the needs of the victims of child sexual abuse. Case confidentiality is particularly important in the MDT process. Currently, there are seven MDTs operating in the WDMI.



A model tribal-specific MDT protocol was developed in 1998. The WDMI Tribes have utilized this model protocol; amended it when appropriate to meet the unique individual tribal needs, and established written protocols of their own. Federal participants from the FBI, BIA and USAO have signed onto each of the protocols as active members. The USAO's Tribal Liaison, the Violent Crime in Indian Country AUSA, and the Indian Country Victim-Witness Coordinator frequently attend these meetings.

III. Western District of Michigan Participation in National Initiatives

A. Native American Issues Subcommittee: Domestic Violence

National involvement in Indian Country issues has been a priority. The United States Attorney serves on the Native American Issues Subcommittee (NAIS) of the Attorney General's Advisory Committee (AGAC). The subcommittee members are United States Attorneys with significant responsibility for Indian Country. The subcommittee is chaired by United States Attorney Thomas Heffelfinger from the District of Minnesota. Mr. Heffelfinger designated the WDMI United States Attorney to head the Family Violence Initiative. In November 2002 the NAIS began to seriously examine the issue of domestic violence as it effects Native women and children.

According to the 2000 Census, approximately 2.5 million people, or 0.9 percent of the total U.S. population, reported American Indian and Alaska Native as their race. An additional 1.6 million people reported American Indian and Alaska Native and at least one other race. Tragically, American Indians experience per capita rates of violence which are more than twice those of the U.S. resident population. Rates of violent victimization for both males and females are higher among American Indians than for all races. The rate of violent crime experienced by American Indian women is nearly 50% higher than that reported by black males. According to the victims of these crimes, at least 70% of the offenders are non-Indian—a substantially higher rate of interracial violence than experienced by white or black victims.¹

Sexual assault and domestic violence are prevalent in Indian Country. From 1993 to 1998, the average annual rate of rape or sexual assault was higher for American Indian women than that of any other race surveyed. Findings from the National Violence Against Women Survey indicate that American Indian and Alaska Native women are at greater risk of violent victimization than are other Americans. Thirty-four percent of American Indian and Alaska Native women will be raped in their

¹Statistics taken from an October 2002 document developed with input from BJS, NIJ, OJJDP, and the American Indian and Alaska Native Affairs Desk.



lifetime as compared to 18.2% of the total number of women. Seventeen percent of all Native women will be stalked during their lifetime.²

In November 2002, United States Attorney Chiara and AUSAs Leslie Hagen and Jeff Davis made a presentation to the NAIS. Four areas were identified that presented significant obstacles to battered Native women receiving justice in the federal system. The four areas were: inadequate training, incomplete data collection, limited warrantless arrest authority, and insufficient research and no federal statutes to deal with the problem of repeat offenders. Following the November meeting, work groups were convened and follow-up presentations focusing on solutions to these problems were presented by United States Attorney Chiara and AUSAs Leslie A. Hagen and Jeff Davis at the February 2003 NAIS meeting. The proposed solutions follow:

1. Data Collection

The current case management system used by the Department of Justice is the Legal Information Office Network System (LIONS). LIONS has proved to be an ineffective tool for accurately capturing case statistics in Indian Country. In part, this is because the LIONS system has limited program category options. Specifically, only one lead charge can be entered. The lead charge determines how a particular case will be counted in a district or national report. Therefore, if a case arises in Indian Country and the criminal charges involve both guns and drugs, there is an inherent conflict in how that case should be entered into LIONS. Select criteria for the primary code may differ district to district, and even docket clerk to docket clerk within the district. There is abundant evidence that the current case management system has substantially skewed downward the number of reported Indian Country cases.

The LIONS system does not accurately collect data about violence against women in Indian Country. There is only one program category code to apply to all case types involving violence against women in Indian Country. The 091 program category code is intended to identify domestic violence cases charged under the Violence Against Women Act (VAWA). However, the overwhelming number of domestic violence cases in Indian Country are charged and prosecuted under the "Major Crimes Act," 18 U.S.C. § 1153, or the "General Crimes Act," 18 U.S.C. § 1152, rather than the 091 program category. This is a significant problem because in many districts the federal government has exclusive jurisdiction over sexual assaults that occur in Indian Country. Sexual assault victims can be adults or children. The statistics are used for resource and program development. The LIONS system has no program category code for sexual assault crimes. Sexual assaults are grouped into a general crime category.

²Id.



2. Training For Prosecutors And Investigators

Domestic violence and sexual assault cases can be complex and difficult. Often there is no eyewitness to the crime other than the victim, the victim may be hesitant to testify against the abuser for a variety of reasons. Jurors can be skeptical of serious criminal charges levied against an individual involved in an intimate relationship with the victim. Litigating these types of cases requires that jurors possess a firm understanding of the nature and prevalence of family violence issues and the lethality risks inherent in intimate partner violence. The trial attorney must have superior litigation skills which include knowledge about the use of expert witnesses and similar acts evidence, experience with recanting witnesses and knowledge of all applicable hearsay exceptions.

It is critical that AUSAs assigned to these types of cases have specialized training. At the time of the NAIS presentations there was no specialized training available to AUSAs assigned to family violence cases arising in Indian Country. Similarly, there was a dearth of training available to agents assigned to investigate family violence cases in Indian Country. Thus, this lack of available training was identified as a critical need at the November 18, 2002 NAIS meeting. Subsequently, specialized training in this subject area was developed for AUSAs, federal agents, tribal prosecutors and tribal law enforcement. This training was organized and led by staff from the National Advocacy Center. AUSA Leslie A. Hagen was a participant on the workgroup planning the training, and she served as faculty at the trainings. The first training was held in June 2003 in Seattle, Washington, and a second training was held in May 2004 in Phoenix, Arizona. Both trainings were well attended and the course evaluations were excellent. Additional training opportunities are dependent on available resources.

3. Research

According to the BIA, there are 561 tribal entities that are federally recognized and eligible for funding and services. Tribal population ranges from four Native American communities with over 100,000 members to some that have only hundreds or fewer. Diversity in size, added to differences in geographic location, criminal justice system infrastructure development, economic base, and tribal government stability appear to impact not only victims' willingness to report crimes of domestic violence or sexual assault, but also Tribes' ability to effectively respond to the crime.

Information about the effect of domestic violence, sexual assault and stalking on native women, children and the community is very limited. Research is needed on the issues of civil legal representation for survivors, health care response to crime victims, access to shelter and transportation, and availability and enforcement of protection orders, among other matters. A collaborative and cooperative response to these issues is requisite for success in the criminal justice system for victims of intimate partner



violence or their children. Well designed and implemented research can provide this essential information.

Organizations funded by the Violence Against Women Act of 2000 (VAWA) are accountable for their expenditures and expected to provide performance evaluations. The missing accountability component is a comprehensive evaluation of programs and best practices. This is particularly true in Indian Country.³ There is virtually no research on violence against women in Indian Country when compared to available research on violence against women in the general population.

Following an examination of the problem, NAIS made the following recommendations:

- Confirm that there is funding in the Bureau of Justice Statistics (BJS) budget for research in Indian Country.
- Request that federal funding agencies, as well as Office of Justice Programs, designate funds for research on violence against women in Indian Country.
- Request that the scope of research include not only the criminal justice system's response to victims of family violence but also the social, economic, physical and mental health impact of these crimes.
- Participate in national task forces, studies and developmental research agendas as provided in VAWA 2000 to ensure that violence against women in Indian Country be included.
- Develop a process whereby Requests for Proposals and research solicitations are consistently sent to each United States Attorney serving Indian Country.
- Develop a procedure whereby research into or evaluations of violence against women programs are routinely sent to each United States Attorney serving Indian Country to provide a source of best practices.

³Eileen Luna's research titled "Impact Evaluation of STOP Grant Programs for Reducing violence Against Women Among Indian Tribes" evaluates the first 14 tribal programs receiving STOP grant monies. The final report, under grant number 96-WT-NX-0006, is available from NCJRS (NCJ 186235).



4. Proposed Legislative Criminal Law Amendments

The proposals were designed to close gaps in existing federal criminal laws or to address specific public safety issues in Indian country for which current laws may be inadequate. Each proposal contained suggested text, together with an elaboration of the proposal's meaning and the public safety issue it is designed to address. The proposals were reviewed and approved by the NAIS. AUSA Leslie A. Hagen vetted these legislative proposals to a group of Native American police and prosecutors in New Mexico in September 2003. To date, none of these proposals have been enacted into law. The Office of Tribal Justice continues to advance the NAIS legislative initiative.

(a) Amend Definition of "Misdemeanor Crime of Domestic Violence"

This proposal was designed to add misdemeanor crimes of domestic violence under tribal law to the current definition of "misdemeanor crime of domestic violence" in 18 U.S.C. § 921(a)(33)(A)(i). The change would make it unlawful for a person who has been convicted of a misdemeanor crime of domestic violence under tribal law to possess, ship, transport, or receive any firearm or ammunition in interstate or foreign commerce pursuant to 18 U.S.C. § 922(g)(9).

§ 921. Definitions

(33)(A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that—

(i) is a misdemeanor under Federal, State or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.



(i) Current Law

Under current federal law more commonly known as the Lautenberg Amendment, persons who have been convicted of a qualifying misdemeanor crime of domestic violence under federal or state law are prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping, transporting, or receiving any firearm or ammunition in interstate or foreign commerce). See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925 (a)(1); 27 C.F.R. §§ 178.11, 178.32.

(ii) Proposed Change

The proposed change would make those persons convicted of a qualifying misdemeanor crime of domestic violence under tribal law also subject to the same prohibition against possessing any firearm or ammunition in or affecting commerce (or shipping, transporting, or receiving any firearm or ammunition in interstate or foreign commerce).

(b) Domestic Assault By A Habitual Offender

It is difficult to prosecute domestic violence in Indian Country, because most domestic violence does not result in "serious bodily injury" as defined in Federal Law.⁴ By the time the injury threshold is met, a long history of assaults affecting the victim and her family have often occurred. Federal authorities are sometimes not able to intervene until there is a homicide. This proposal would create a new Indian Country offense called "domestic assault by a habitual offender."

Domestic assault by a habitual offender.

(a) Any person who commits an assault against a spouse or intimate partner in an area of Indian country to which section 1153 of this title applies and who has previously been convicted (and those convictions have become final) on at least two separate prior occasions in any tribal, State, or federal court (or combination thereof) of an offense that would, if subject to federal jurisdiction, be:

(1) an assault or sexual abuse or a serious violent felony against a spouse or intimate partner; or

⁴"Serious bodily injury" is defined by reference to 18 U.S.C. sec. 1365(g)(3) to include "bodily injury which involves – (a) substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."



(2) any offense under chapter 110A of this Title.

shall be sentenced for a term of not more than 5 years, except that if substantial bodily injury results, the offender shall be sentenced for a term of not more than 10 years.

(b) for purposes of this section:

(1) "spouse or intimate partner" shall have the meaning set forth in section 2266(7) of this Title;

(2) "serious violent felony" shall have the meaning set forth in section 3559(c)(2)(F) of this Title.

(3) "State" shall have the meaning set forth in section 3559(c)(2)(G) of this Title.

(4) "tribal" shall meaning under the authority of an Indian tribe, as that term is defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(5) "substantial bodily injury" shall have the meaning set forth in section 113(b) of this Title.

(6) "sexual abuse" shall have the meaning set forth in section 2242 of this Title.

(c) this section shall not apply unless either the offender or the victim is an Indian.

(i) Current law

The Federal Government can prosecute assaults resulting in serious bodily injury, as well as assaults with a dangerous weapon or with intent to commit murder, under the Major Crimes Act. 18 U.S.C. § 1153. Conversely, however, the Federal Government may not prosecute persons who commit acts of domestic violence unless they are committed with a dangerous weapon or intent to murder or result in an injury that is sufficiently grave to qualify as "serious bodily injury," which is a very high threshold to meet.



(ii) Proposed change

The proposed change would create a separate felony offense of domestic assault against a spouse or intimate partner by a habitual offender. It is similar to the laws enacted in a number of states, which provide for felony penalties when an offender has been repeatedly convicted of assaults against household members. See Ariz. Rev. Stat. § 13-3601.02(A); Mich. Comp. Laws § 750.81(4); Miss. Code Ann. § 97-3-7(3); Mont. Code Ann. § 45-5-206(3); Nev. Rev. Stat. § 200.485(1)(c); 21 Okla. Stat. Ann. 21, § 644(C). As in a number of states that have such laws, a felony penalty applies after the third offense. See Ariz. Rev. Stat. § 13-3601.02(A); Mich. Comp. Laws § 750.81(4); Miss. Code Ann. § 97-3-7(3); *compare* Okla. Stat. Ann. 21, § 644(C); Mont. Code Ann. § 45-5-206(3); Nev. Rev. Stat. § 200.485(1)(c). In addition, the “serious bodily injury” standard, with a definition similar to the federal one, is used in a number of states for defining threshold felony offenses. See Ariz. Rev. Stat. § 13-105(34); Okla. Stat. Ann. 21, § 646(1); Miss. Code Ann. § 97-3-7(4).

This proposal and similar state laws rest on the recognition that domestic abuse is often a recurring problem, with serious incidents usually occurring as part of a chain of ongoing behavior by the offender. For that reason, it is aimed at persons who have a history of criminal conduct, yet continue to engage in violent abusive behavior. This proposal would also provide for harsher penalties for assaults by repeat offenders that result in “substantial bodily injury,” which is defined by reference to 18 U.S.C. § 113(b). Section 113(b), in turn, “means bodily injury which involves – (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of any bodily member, organ, or mental faculty.” This degree of injury is more easily met than the standard of “serious bodily injury” required for an assault prosecution under the Major Crimes Act, yet higher than the standard for simple assault. It is the same standard used to impose felony penalties for assaults committed against persons under 16 years old. See 18 U.S.C. § 113(a)(7). Assaults resulting in “serious bodily injury” are, incidentally, already Major Crimes, and are punishable by up to ten years’ imprisonment. 18 U.S.C. § 113(a)(6). This proposal would apply to assaults against a “spouse or intimate partner,” which is defined by reference to section 2266. Under that definition, a “spouse or intimate partner” is “a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser.”

Consistent with longstanding historical practice, this proposal does not define a federal crime that includes minor offenses. Rather, the proposal recognizes the seriousness of domestic violence by repeat offenders and based on that recognition, extends federal jurisdiction to those serious offenses, while reserving to the Tribes continuing exclusive jurisdiction over less serious ones. Because this provision applies to Indians in Indian country, who will in most cases be subject to exclusive tribal court jurisdiction, it would allow tribal court convictions to satisfy the prior conviction element.



See Ariz. Rev. Stat. § 13-3601.02.A (identifying prior tribal court convictions as satisfying the prior conviction element for aggravated domestic abuse).

(c) Proposal to Amend BIA Arrest Authority

(i) Background

Federal courts have exclusive jurisdiction over domestic violence crimes committed in Indian country where the perpetrator is a non-Indian and the victim is an Indian, and concurrent jurisdiction with the tribal courts where the perpetrator is an Indian and the victim is a non-Indian (18 U.S.C. § 1152).

Federal arrest authority is granted by statute. Each agency has its own arrest authority statute. See 18 U.S.C. § 3052 (F.B.I.); 18 U.S.C. § 3053 (U.S.M.S.); 18 U.S.C. § 3056 (U.S.S.S.); 18 U.S.C. § 3061 (U.S.P.S.). All share a similar grant of arrest authority: these agencies may make an arrest without a warrant for any felony for which the officer has reasonable grounds to believe that the crime is being committed or was committed, and for misdemeanors that occur *in the presence of the arresting officer*.

The statute governing the Bureau of Indian Affairs (BIA) is no different. 25 U.S.C. § 2803 allows a BIA employee to make an arrest without a warrant for an offense committed in Indian Country if the offense is committed in the presence of the employee or the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed or is committing, the felony. Most, if not all, tribal police agencies derive their federal arrest authority from this statute by designation from the BIA.

Most domestic violence crimes are misdemeanors and most of those are not committed in the presence of a federal officer. This limitation prevents the arrest of domestic violence perpetrators where federal jurisdiction exists.

This constraint has serious consequences. Victims of domestic violence are at risk. The only way to diffuse a dangerous situation may be to remove the victim, because law enforcement lacks the ability to arrest the perpetrator. This inability to arrest non-Indian perpetrators of violence against women in Indian Country also promotes an appearance of disparate treatment on the basis of race. This disparity is particularly blatant in jurisdictions where state and tribal statutes are not similarly limited, and the arrest of domestic violence perpetrators is the norm.

NAIS adopted the following proposed amendment to the BIA arrest authority statute found at 25 U.S.C. § 2803. The proposed changes to the statute are in boldface.



25 U.S.C. § 2803. Law enforcement authority

The Secretary may charge employees of the Bureau with law enforcement responsibilities and may authorize those employees to--

- (1) carry firearms;
- (2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of--
 - (A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary), or
 - (B) an Indian tribe if authorized by the Indian tribe;
- (3) make an arrest without a warrant for an offense committed in Indian country if--
 - (A) the offense is committed in the presence of the employee, or
 - (B) the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony;
 - (C) the offense is a misdemeanor crime of domestic violence and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.**
- (4) offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;
- (5) make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out tribal laws;
- (6) wear a prescribed uniform and badge or carry prescribed credentials;
- (7) perform any other law enforcement related duty; and
- (8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.

B. Tenth Anniversary of the Violence Against Women Act

On September 13 and 14, 2004, hundreds of leaders in the Violence Against Women movement gathered in Washington DC to celebrate the tenth anniversary of the Violence Against Women Act landmark legislation,. Initially passed in 1994, this legislation has provided millions of dollars to Michigan to combat domestic violence, sexual assault and stalking. The act also gave police and prosecutors new tools for charging domestic violence offenders who cross jurisdictional boundaries to commit their crimes. (18 U.S.C. §§ 2261, 2261A and 2262).



According to the Office on Violence Against Women, "Data reported by OJP's Bureau of Justice Statistics show that almost 700,000 incidents of domestic violence are documented each year. FBI data further shows that in the last 25 years almost 57,000 individuals have been killed in domestic violence situations."

The tenth anniversary symposium was organized by the Office of Justice Programs' Violence Against Women Office. The symposium focused on the causes, effects and societal beliefs relating to domestic violence. Speakers addressed various approaches both responding to and preventing domestic abuse, sexual assault and stalking. An entire track of the conference was dedicated to issues arising in Indian Country. Speakers included United States Attorney Chiara and AUSA Leslie A. Hagen.

Attorney General John Ashcroft addressed the audience and noted that since the passage of the Violence Against Women Act, the Justice Department and its partners at the Department of Health and Human Services have made it possible for countless women to renew their hope, reclaim their dignity, and change their lives. OJP's Violence Against Women Office alone has made more than \$1 billion available to help communities increase support services for domestic violence victims and their children.

C. Sexual Assault

National Protocol for Sexual Assault Examinations

Amendment to the Violence Against Women Act in 2000 required the Department of Justice to develop a national protocol for sexual assault examinations. The protocol was recently completed and released for distribution. The protocol was designed as a guide for criminal justice and health care practitioners who respond to victims of sexual assault. The protocol was developed with the input of national, local, and tribal experts throughout the country, including law enforcement representatives, prosecutors, advocates, medical personnel, forensic scientists, and others. Locally, AUSA Leslie A. Hagen participated on the criminal justice working group.

The goal of the protocol is to encourage the development of timely and competent forensic, medical examinations in sexual assault cases. The examination can potentially validate and address sexual assault patients concerns, minimize trauma they may experience, and promote their healing. Moreover, such an examination can increase the likelihood that the evidence collected will aid in successful prosecution resulting in perpetrators being held accountable and further sexual violence prevented.

The primary issues in the protocol are a coordinated approach, victim-centered care, informed consent, confidentiality, reporting to law enforcement, and payment for the examination under the Violence Against Women Act. It is anticipated that the combination of cutting edge response techniques and collaboration among service



providers will greatly enhance the ability to treat and support victims as well as identify and punish sex offenders.

A copy of a *National Protocol for Sexual Assault Medical Forensic Examinations* may be obtained on-line at <http://www.ojp.usdoj.gov/vawo/> .

D. Federal/Tribal Sexual Assault Working Group

A working group was convened by the Office on Violence Against Women to examine ways to strengthen the investigation and prosecution of sexual assault crimes perpetrated against Indian women. The working group first met in September 2003, and was comprised of prosecution, law enforcement, and medical personnel representatives from BIA, FBI, USAO, and the tribes. United States Attorney Chiara and AUSA Leslie A. Hagen were both members of this working group. The focus of this initiative is exclusively with federal government. The prosecution rates for sexual assaults upon adult Indian women in the federal system was examined. According to the FBI, 160 Indian Country adult sexual assault cases were initiated in 2003; 53 informations and indictments were generated, 52 arrests were made, and 54 convictions for sexual assault were obtained in the federal system.

A second meeting was convened in July 2004. At this meeting, a pilot project for a federal/tribal sexual assault initiative was developed. The scope of the initiative is as follows:

"The Department of Justice's Safety for Indian Women from Sexual Assault Offenders Demonstration Initiative" is an effort of the Office on Violence Against Women to enhance the response of tribal and federal agencies to sexual assault of Indian women. The initiative will support demonstration sites that build upon an existing coordinated community response to sexual assault of Indian women by strengthening the capacity of tribal justice systems to immediately respond to sexual assault of Indian women, increasing advocacy and services to victims of sexual assault, and strengthening coordination between tribal and federal agencies responding to crimes of sexual assault of Indian women. Tribal justice initiatives that leverage the coercive power of the tribal and federal criminal justice systems and challenge tribal and federal agencies to expand the current response to crimes of sexual assault against Indian women will be central to the development and implementation of local initiatives. Demonstration sites will receive technical assistance throughout the term of the award. Each site will be required to participate in a rigorous evaluation of project activities. In Fiscal Year 2005, each demonstration site will receive up to \$300,000 for 12 months for program activities. Contingent upon Congressional appropriations, demonstration sites will receive comparable financial support for an additional two years with possibility of extension."

In the WDMI the Hannahville Indian Community has responded to the RFP. AUSA Leslie A. Hagen assisted tribal personnel with the grant application.



IV. Criminal Case Highlights

United States v. Daniel LeBlanc (Bay Mills Indian Community - Aggravated Sexual Abuse of a Minor). A jury sitting in federal district court in Grand Rapids, Michigan, found Daniel LeBlanc guilty of aggravated sexual abuse of a minor. LeBlanc is an enrolled member of the Bay Mills Indian Community. The sexual assault occurred on lands held in trust by the United States for the Bay Mills Indian Community. In 2001, Chief Judge Robert Holmes Bell sentenced LeBlanc to 138 months incarceration, five years supervised release, and a \$100 special assessment. AUSA Michael MacDonald.

United States v. Gregory James Antoine (Grand Traverse Band of Ottawa and Chippewa Indians - Aggravated Sexual Abuse). Defendant pleaded guilty to aggravated sexual abuse. Antoine is an enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians. The sexual assault occurred on lands held in trust by the United States for the Grand Traverse Band. In 2001, Judge Richard Alan Enslen sentenced Antoine to 87 months incarceration, four years supervised release, a \$1,380 fine, and a \$100 special assessment. AUSA Timothy VerHey.

United States v. Donald Thomas Dangler, Sr. (Sault Ste. Marie Band of Chippewa Indians - Third Degree Physical Child Abuse). Defendant, pursuant to the Assimilative Crimes Act, pleaded guilty to third degree physical child abuse. Dangler is a non-Indian who physically abused his children, who are members of the Sault Ste. Marie Tribe of Chippewa Indians. The assaults occurred on the Tribe's trust lands. In October 2001, Judge David W. McKeague sentenced the defendant to 18 months incarceration, 12 months of supervised release, 100 hours of community service, and a \$100 special assessment. AUSA Jeff Davis

United States v. Leslie David Antoine (Grand Traverse Band of Ottawa and Chippewa Indians - Aggravated Sexual Abuse of a Minor). Defendant pleaded guilty to aggravated sexual abuse of a minor. Antoine is an enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians. The sexual assault occurred on lands held in trust by the United States for the Grand Traverse Band. In 2001, Judge David W. McKeague sentenced Antoine to 300 months incarceration, five years supervised release, \$100 restitution, and a \$100 special assessment. AUSAs Timothy VerHey and Jeff Davis.

United States v. Michael Anthony Meier (Grand Traverse Band of Ottawa and Chippewa Indians - Assault Resulting in Serious Bodily Injury). Defendant pleaded *nolo contendere* to assault resulting in serious bodily injury. Meier is an enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians. The assault occurred on land held in trust by the United States for the Grand Traverse Band. In 2001, Judge Gordon J. Quist sentenced Meier to 33 months incarceration, three years supervised release, a \$300 fine, and a \$100 special assessment. AUSA Timothy VerHey.



United States v. Harvey White (Lac Vieux Desert Band of Lake Superior Chippewa - Embezzlement From a Tribal Organization). Defendant pleaded guilty to embezzlement from a tribal organization. White conspired with then Tribal Chairman John McGeshik, Jr., to embezzle monies from the Lac Vieux Desert Band's gaming operation. In 2001, Judge R. Allen Edgar sentenced White to one month incarceration, two years supervised release, a \$1,500 fine, \$19,269.92 restitution, and a \$100 special assessment. AUSA Michael MacDonald.

United States v. John McGeshik, Jr. (Lac Vieux Desert Band of Lake Superior Chippewa - Embezzlement From a Tribal Organization). McGeshik, Jr., pleaded guilty to embezzlement from a tribal organization. McGeshik, Jr. was the elected Chairman of the Lac Vieux Desert Band of Lake Superior Chippewa at the time of the embezzlement. McGeshik, Jr. conspired with Harvey White and others to embezzle monies from the Tribe over an extended period of time. In 2002, Judge Gordon J. Quist sentenced McGeshik, Jr., to 12 months and one day incarceration, three years supervised release, approximately \$256,257.95 restitution, and a \$100 special assessment. AUSA Michael MacDonald.

United States v. Evan Peterson (Sault Ste. Marie Tribe of Chippewa Indians - Aggravated Sexual Assault of a Minor). Peterson pleaded guilty to seven counts of aggravated sexual assault of a minor. Peterson is a non-Indian who assaulted minor Indian victims. The sexual assaults occurred on lands held in trust by the United States for the Sault Ste. Marie Tribe of Chippewa Indians. In 2002, Judge David W. McKeague sentenced Peterson to 135 months incarceration, three years supervised release, \$100,302 restitution, and a \$700 special assessment. AUSA Michael MacDonald.

United States v. Severo Garcia-Meza (Grand Traverse Band of Ottawa and Chippewa Indians - Murder; Assault with a Deadly Weapon). In September 2003, the defendant was convicted of first-degree murder and aggravated assault by a federal jury in Kalamazoo, Michigan. In November 2003, Judge Richard Alan Enslen sentenced Garcia-Meza to life in prison for the murder of his wife, Kathleen Floyd Garcia, and to a concurrent term of 10 years in prison for the aggravated assault of the victim's then 12-year-old son. Garcia-Meza is a Mexican national. AUSAs Lloyd Meyer and Andrew Birge.

United States v. Jacob John Keshick (Hannahville Indian Community - Assault with a Dangerous Weapon). In September 2003, Jacob John Keshick, of Mt. Pleasant, Michigan, pleaded guilty to a criminal information charging him with assault with a dangerous weapon in violation of federal law. In January 2004, Judge Gordon J. Quist sentenced Keshick to 33 months incarceration, three years supervised, \$9,796.94 restitution and a \$100 special assessment. AUSA Leslie A. Hagen.

United States v. Douglas Michael Smith (Little Traverse Bay Band of Odawa Indians - Theft of Identity) Defendant while employed by the Little Traverse Bay Band of Odawa Indians' Victories Casino stole the identity of casino patrons, and used the information



to obtain fraudulent credit cards. In December 2003, Chief Judge Robert Holmes Bell sentenced Smith to 6 months incarceration, three years of supervised release, full restitution, and a \$100 special assessment. AUSA Michael MacDonald.

United States v. John Lynn Kavo (Bay Mills Indian Community - Aggravated Sexual Abuse by Force). In August 2003, John Lynn Kavo pleaded guilty to an indictment charging him with aggravated sexual abuse by force. In January 2004, Judge David W. McKeague sentenced Kavo to 121 months, three years supervised release, a \$5,400 fine, and a \$100 special assessment. AUSA Leslie A. Hagen.

United States v. Albert J. Kappell (Keweenaw Bay Indian Community - Child Sexual Assault). In October 2003 Albert J. Kappell was convicted of nine counts of sexual abuse of two young girls by a federal jury in Marquette, Michigan. The victims, who were three and six years of age when Kappell assaulted them, are member of the Keweenaw Bay Indian Community. Kappell a non-Indian and previously convicted child molester, repeatedly abused the young girls, including acts of penile and digital penetration, during a six month period in 2001 and 2002 when he lived with the girls' mother. In March 2004, Judge David W. McKeague sentenced Kappell, of Appleton, Wisconsin, to life in prison. AUSAs Leslie A. Hagen and Michael MacDonald.

United States v. Angelech Louise Hall (Hannahville Indian Community - Theft from a Tribal Organization). In November 2003, Hall pleaded guilty to a criminal information charging her with theft from an Indian tribal organization. In March 2004, Judge David W. McKeague sentenced Hall to one month in jail followed by three years supervised release, and a \$100 special assessment. The sentence also included an order to pay \$8,000 in restitution to the Hannahville Indian Community. AUSA Paul Lochner.

United States v. Gary Paul Phillips (Hannahville Indian Community - Aggravated Sexual Abuse by Force). In December 2003, Gary Paul Phillips, 46, of Wilson, Michigan, pleaded guilty to aggravated sexual abuse by force. Phillips sexually assaulted an Indian woman on land held in trust for the use of the Hannahville Indian Community. In March 2004, Judge Gordon J. Quist sentenced Phillips to 136 months, \$7,800 restitution, five years supervised release and a \$100 special assessment. AUSA Leslie A. Hagen.

United States v. Brenda Lou Welsh (Keweenaw Bay Indian Community - Theft of Federal Program Funds). In December 2003, Brenda Lou Welsh, 58, of Baraga, Michigan, pleaded guilty to theft of federal program funds. In March 2004, Judge David W. McKeague sentenced Welsh to 36 months incarceration, \$420,780.90 restitution, three years supervised release, and a \$100 special assessment. AUSA Daniel Mekaru.

United States v. Daniel Meshigaud (Hannahville Indian Community - Theft of Tribal Property). In November 2003, Daniel Meshigaud, 42, of Wilson, Michigan, pleaded guilty to a federal indictment charging him with theft of tribal property. In March 2004, Judge David W. McKeague sentenced Meshigaud to one month in jail, three years



supervised release, \$3,793.50 restitution, and a \$100 special assessment. AUSA Michael MacDonald.

United States v. Mary Eva Smith (Little River Band of Ottawa Indians - Assaulting a Federal Officer; Disorderly Person). In December 2003, Mary Eva Smith was convicted of forcibly assaulting a federal officer. In April 2004, Judge Ellen S. Carmody sentenced Smith to three months home confinement, one year supervised release, and a \$50 special assessment. AUSA Jeff Davis.

United States v. Jon Duane Ramsey (Hannahville Indian Community - Assault by Wounding). In April 2004, Jon Duane Ramsey, 30, of Calumet, Michigan, pleaded guilty to one count of assault by wounding. The victim is a member of the Hannahville Indian Community. Ramsey is a non-Indian. In September 2004, Judge Timothy P. Greeley sentenced Ramsey to a term of two years probation with the following conditions: no alcohol or controlled substances; random drug and alcohol testing; successful completion of a Batterer's Intervention Program; no violation of any federal, state, or tribal laws; no threatening or assaultive behavior; and no purchasing or possessing of a firearm or ammunition. AUSA Leslie A. Hagen.

United States v. Kimberly Sue Davis (Sault Ste. Marie Tribe of Chippewa Indians - Assault on a Person Less than Sixteen Years of Age). In April 2004, Kimberly Sue Davis, 30, of Newberry, Michigan, pleaded guilty to assaulting a person less than 16 years of age, in violation of federal law. In April 2004, Judge Timothy P. Greeley sentenced Davis to a term of five days incarceration, one year supervised release, and a \$25 special assessment. AUSA Leslie A. Hagen.

United States v. Bernard Ferguson (Sault Ste. Marie Tribe of Chippewa Indians - Abusive Sexual Contact). In May 2004, Bernard Ferguson, 44, of St. Ignace, Michigan was convicted of abusive sexual contact. The abusive sexual contact occurred in October 2002 in Mackinac County on land held in trust by the United States for the Sault Ste. Marie Tribe of Chippewa Indians. The victim is an enrolled member of the Sault Ste. Marie Tribe, and the defendant is a non-Indian. In August 2004, Judge Timothy P. Greeley sentenced Ferguson to the maximum six months in jail and a \$10 special assessment. AUSA Leslie A. Hagen.

United States v. Oscar Ramirez, Jr. (Grand Traverse Band of Ottawa and Chippewa Indians- Domestic Violence). In April 2004, Oscar Ramirez, Jr., 28, of Benzie County, Michigan, pleaded guilty to domestic violence - second offense, a state of Michigan felony offense charged federally through the Assimilative Crimes Act. The victim is a tribal member, and the defendant is non-Indian. In August 2004, Judge David W. McKeague sentenced Ramirez to the maximum sentence of 12 months incarceration, one year supervised release and a \$10 special assessment. AUSA Leslie A. Hagen.

United States v. Tanya Jean Fugett (Bay Mills Indian Community - Theft from a Tribal Gaming Establishment) In December 2003, Fugett pleaded guilty to an indictment



charging her with theft from a gaming establishment on Indian land. The indictment alleged that Fugett knowingly wrote insufficient fund checks to the Tribe's casino. In May 2004, Chief Judge Richard Holmes Bell sentenced Fugett to two years probation, 200 hours community service, \$2,600 restitution, and a \$100 special assessment. In October 2004, Chief Judge Richard Holmes Bell sentenced Fugett to six months in jail for violating the terms of her probation. At the probation revocation hearing, the government proved that Fugett stole from her employer, K-Mart. AUSAs Paul Lochner and Hagen Frank.

United States v. Ronald Carlton (Sault Ste. Marie Tribe of Chippewa Indians - Interstate Travel to Commit Domestic Violence). In August 2004, Ronald Kevin Carlton, 26, pleaded guilty to Interstate Travel to Commit Domestic Violence. In December 2004, Judge R. Allen Edgar sentenced Carlton to 57 months incarceration, three years supervised release, \$2,000 fine, and a \$100 special assessment. AUSA Leslie A. Hagen.

United States v. Dawn Cruickshank (Bay Mills Indian Community - Theft from an Indian Gaming Establishment). In June 2004, Dawn Marie Cruickshank, 27, of Sault Ste. Marie, Michigan, pleaded guilty to a federal indictment. As part of her plea, Cruickshank admitted taking \$3,500 for her own benefit from the Bay Mills Resort and Casino by issuing checks on an account in which she knew she did not have sufficient funds. In December 2004, Judge Gordon J. Quist sentenced Cruickshank to two years probation, 120 hours community service, undergo mental health counseling, full restitution and a \$100 special assessment. AUSA Paul Lochner.

United States v. Gary Paul Phillips-Donovan (Hannahville Indian Community - Sexual Abuse of a Minor). In October 2004, Phillips-Donovan pleaded guilty to Sexual Abuse Against a Minor. Phillips-Donovan agreed to register as a sexual offender under the laws of the State of Michigan, and agreed to be tested for the etiologic agent for acquired immune deficiency syndrome. Both the defendant and victim are Indian. In January 2005, Judge Gordon J. Quist sentenced Phillips-Donovan to 21 months incarceration, three years supervised release, \$1,000 fine, and a \$100 special assessment. AUSA Leslie A. Hagen.

United States v. Phillip Sizemore (Hannahville Indian Community – Assault by Wounding). In September 2004, Phillip E. Sizemore, pleaded guilty to an Information charging him with Assault by Wounding. The assault occurred on lands held in trust by the United States for the Hannahville Indian Community. In January 2005, Judge Timothy P. Greeley sentenced Sizemore to two years probation, \$500 fine, and a \$10 special assessment. AUSA Leslie A. Hagen.

United States v. Melissa Matthews (Sault Ste. Marie Tribe of Chippewa Indians - Sexual Abuse of a Minor). In October 2004, Melissa Matthews, 19, of Kincheloe, Michigan, pleaded guilty to one count of Sexual Abuse Against a Minor. Matthews also agreed to register as a sexual offender under the laws of the State of Michigan, and she



has agreed to be tested for the etiologic agent for acquired immune deficiency syndrome. The victim is a non-Indian and Ms. Matthews is an Indian. In April 2005, Judge David W. McKeague sentenced Matthews to 36 months incarceration, 3 years supervised release, \$850 fine, \$100 special assessment, and special conditions including no consumption of alcohol and no unsupervised contact with any person under the age of 18. AUSA Leslie A. Hagen.

United States v. Jack Ordway (Bay Mills Indian Community - Sexual Abuse Against a Minor). In November 2004, Jack Arlin Ordway, 67, pleaded guilty to a federal indictment. The defendant also agreed to register as a sexual offender under the laws of the State of Michigan, and he has agreed to be tested for the etiologic agent for acquired immune deficiency syndrome. The defendant is a non-Indian, and the victim is Indian. In March 2005, Chief Judge Richard Holmes Bell sentenced Ordway to 24 months incarceration, 3 years supervised release, \$100.00 special assessment. AUSA Leslie A. Hagen.

United States v. Joseph Lee Seymour (Hannahville Indian Community - Aggravated Sexual Abuse). In December 2004, Joseph Lee Seymour, 28, was convicted of two counts of aggravated sexual assault by a federal jury in Marquette, Michigan. In May 2005, Judge R. Allan Edgar sentenced Seymour to 262 months incarceration, 5 years supervised release, and a \$100 special assessment per count. AUSA Paul Lochner and Leslie A. Hagen.

WDMI - Case Statistics by Tribe (2001-2004)								
Tribe	Sexual Abuse ¹	Sexual Abuse-Minor	Assault ²	Embezzlement	Theft from Gaming Establishment	Drugs	Firearms	Other ³
Bay Mills	3	3	6	1	2	1		1
Grand Traverse Band	1	3	11	3		3		2
Gun Lake								
Hannahville	4	8	11	3	5			3
Hurons								
Keweenaw Band	4	4	8	3	2	2		1
Lac Vieux Desert				3	1			
Little River			2	2				
Little Traverse			1					
Pokagons				2				1
Sault Ste. Marie	5	6	10					3

¹ Includes cases that may have been brought under 18 USC § 2244 (Abusive Sexual Contact)

² Includes cases of Aggravated Assault, Simple Assault, and Assault on Federal Officer

³ "Other" includes, but is not limited to, crimes brought under murder, manslaughter, and interstate travel to commit domestic violence statutes

**STATISTICS PRESENTED REPRESENT THE CRIMINAL CASES REFERRED, OPENED, AND/OR ADJUDICATED
WESTERN DISTRICT OF MICHIGAN 2001-2004**

WDMI - Case Statistics by Tribe (2001)								
Tribe	Sexual Abuse ¹	Sexual Abuse-Minor	Assault ²	Embezzlement	Theft from Gaming Establishment	Drugs	Firearms	Other ³
Bay Mills		1	1			1		
Grand Traverse Band			3			2		
Gun Lake								
Hannahville	1	1	1	1	5			
Hurons								
Keweenaw Band	3	1	2	2	1	2		
Lac Vieux Desert				1	1			
Little River								
Little Traverse								
Pokagons								
Sault Ste. Marie	3		2					

¹ Includes cases that may have been brought under 18 USC § 2244 (Abusive Sexual Contact)

² Includes cases of Aggravated Assault, Simple Assault, and Assault on Federal Officer

³ "Other" includes, but is not limited to, crimes brought under murder, manslaughter, and interstate travel to commit domestic violence statutes

**STATISTICS PRESENTED REPRESENT THE CRIMINAL CASES REFERRED, OPENED, AND/OR ADJUDICATED
WESTERN DISTRICT OF MICHIGAN 2001**

WDMI - Case Statistics by Tribe (2002)

Tribes	Sexual Abuse ¹	Sexual Abuse-Minor	Assault ²	Embezzlement	Theft from Gaming Establishment	Drugs	Firearms	Other ³
Bay Mills			4		2			
Grand Traverse Band		2	2	1		1		2
Gun Lake								
Hannahville				1				
Hurons								
Keweenaw Band	1	2	2	1				
Lac Vieux Desert				2				
Little River								
Little Traverse								
Pokagons				2				1
Sault Ste. Marie	2		1					

¹ Includes cases that may have been brought under 18 USC § 2244 (Abusive Sexual Contact)

² Includes cases of Aggravated Assault, Simple Assault, and Assault on Federal Officer

³ "Other" includes, but is not limited to, crimes brought under murder, manslaughter, and interstate travel to commit domestic violence statutes

**STATISTICS PRESENTED REPRESENT THE CRIMINAL CASES REFERRED, OPENED, AND/OR ADJUDICATED
WESTERN DISTRICT OF MICHIGAN 2002**

WDMl - Case Statistics by Tribe (2003)								
Tribe	Sexual Abuse ¹	Sexual Abuse-Minor	Assault ²	Embezzlement	Theft from Gaming Establishment	Drugs	Firearms	Other ³
Bay Mills	2	1		1				
Grand Traverse Band		1	1	2				
Gun Lake								
Hannahville	1	1	3	1				2
Hurons								
Keweenaw Band		1	1					
Lac Vieux Desert								
Little River			2	2				
Little Traverse								
Pokagons								
Sault Ste. Marie		2	4					1

¹ Includes cases that may have been brought under 18 USC § 2244 (Abusive Sexual Contact)

² Includes cases of Aggravated Assault, Simple Assault, and Assault on Federal Officer

³ "Other" includes, but is not limited to, crimes brought under murder, manslaughter, and interstate travel to commit domestic violence statutes

**STATISTICS PRESENTED REPRESENT THE CRIMINAL CASES REFERRED, OPENED, AND/OR ADJUDICATED
WESTERN DISTRICT OF MICHIGAN 2003**

WDMI - Case Statistics by Tribe (2004)								
Tribe	Sexual Abuse ¹	Sexual Abuse-Minor	Assault ²	Embezzlement	Theft from Gaming Establishment	Drugs	Firearms	Other ³
Bay Mills	1	1	1					1
Grand Traverse Band	1		5					
Gun Lake								
Hannahville	2	6	7					1
Hurons								
Keweenaw Band			3		1			1
Lac Vieux Desert								
Little River								
Little Traverse			1					1
Pokagons								
Sault Ste. Marie		4	3					2

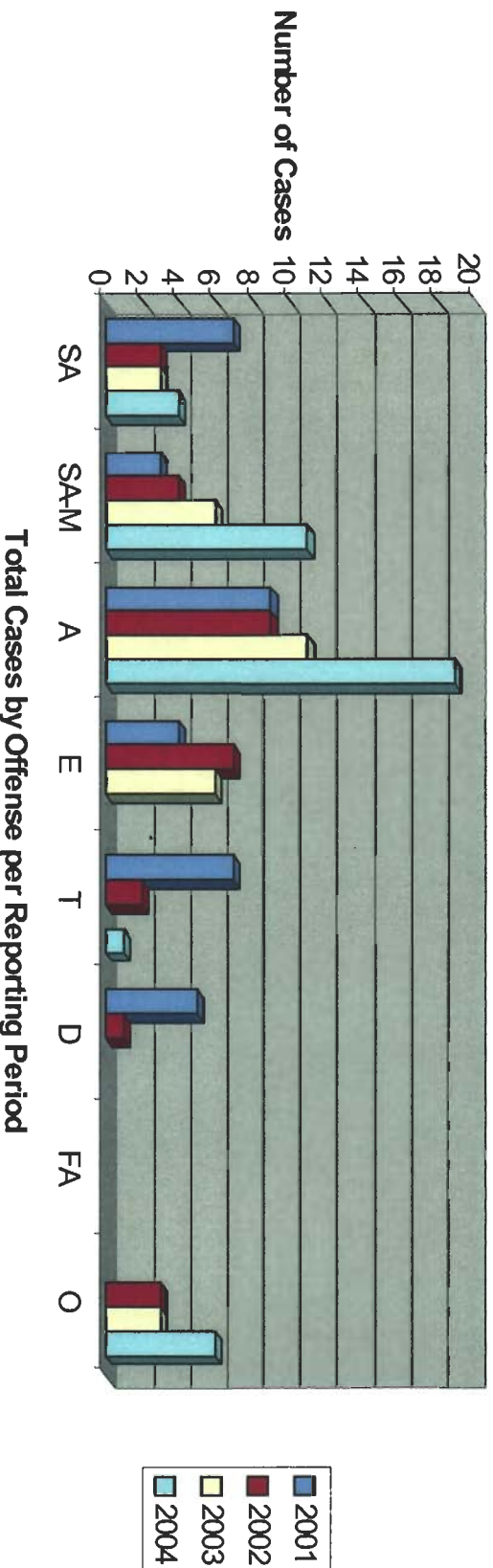
¹ Includes cases that may have been brought under 18 USC § 2244 (Abusive Sexual Contact)

² Includes cases of Aggravated Assault, Simple Assault, and Assault on Federal Officer

³ "Other" includes, but is not limited to, crimes brought under murder, manslaughter, and interstate travel to commit domestic violence statutes

**STATISTICS PRESENTED REPRESENT THE CRIMINAL CASES REFERRED, OPENED, AND/OR ADJUDICATED
WESTERN DISTRICT OF MICHIGAN 2004**

Summary of Statistics by Charge



SA: Sexual Assault; SA-M: Sexual Assault-Minor; A: Assault; E: Embezzlement; T: Theft from Gaming Establishment; D: Drugs; FA: Firearms; O: Other
 "Other" includes, but is not limited to, crimes brought under murder, manslaughter, and interstate travel to commit domestic violence statutes

**STATISTICS PRESENTED REPRESENT THE CRIMINAL CASES REFERRED, OPENED, AND/OR ADJUDICATED
 WESTERN DISTRICT OF MICHIGAN 2001-2004.**



V. Civil Case Highlights

United States, Plaintiff, Bay Mills Indian Community, Sault Ste. Marie Tribe of Chippewa Indians, Grand Traverse Band of Ottawa, and Chippewa Indians, Little River Band of Ottawa Indians, and Little Traverse Bay Band of Odawa Indians, Plaintiff-Intervenors/Counter Defendants v. State of Michigan, Defendant/Counter Claimants, United States District Court, Western District of Michigan Case No. 2:73-CV-26 (RAE).

The United States filed its original complaint in *United States v. Michigan* in 1973, on behalf of the Bay Mills Indian Community. The complaint, as amended in 1976, asserted a continuing treaty-protected right to fish in waters of the Great Lakes adjacent to the lands ceded by the Treaty of March 28, 1836 with the Ottawa and Chippewa Nations of Indians. Ultimately, Bay Mills and four other tribes intervened in the litigation as Plaintiff-Intervenors: Sault Ste. Marie Tribe of Chippewa Indians, Little Traverse Bay Bands of Odawa Indians, Little River Band of Ottawa Indians, and Grand Traverse Band of Ottawa and Chippewa Indians.

In 1979, Judge Fox found that the Tribes reserved their aboriginal right to fish in the ceded waters of the Great Lakes because they did not relinquish the right in the 1836 Treaty, and no subsequent treaty or other congressional action terminated the rights. The critical issue in the case involved interpretation of Article 13 of the 1836 Treaty, which provides: "The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement." Judge Fox found that Article 13 was ambiguous, that the language was broad enough to encompass fishing, and that Article 13 was only intended to limit Indian use of particular plots of land; that is, the aboriginal right to fish in the Great Lakes was impliedly reserved and the right was never terminated because the Great Lakes, as large bodies of water, could never be "required for settlement." Following Judge Fox's decision, the parties negotiated a 15-year consent decree to govern the terms and conditions upon which the right would be exercised, which was entered in 1985 and renegotiated in 2000 for a 20-year period.

In November 2003, the State filed a counterclaim against the Plaintiff-Inteviewer Tribes, which expressly raised issues undecided in the initial phase of the litigation: the Tribes' rights to hunt and fish on inland lands and waters. The State's counterclaim seeks a declaratory judgment that the Tribes retain no such rights, except on federal lands that have never passed out of federal control, and on which the exercise of those rights is not inconsistent with the purpose of federal ownership. Like the Great Lakes phase of the case, the critical issue in litigating the counterclaim will be interpretation of Article 13 of the 1836 Treaty.



The Tribes filed an answer to the counterclaim asserting their sovereign immunity and denying that their Treaty right was limited in the manner described by the State. In April 2004, the United States filed a supplemental complaint that challenged the State's legal position, so that resolution of the issue can be obtained that will govern all parties to the litigation. The parties are currently engaged in discovery. A trial is scheduled for January 2006.

Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the United States Attorney for the Western District of Michigan, No. 02-1679, 369 F.3d 960, 2004 WL 1144510 (6th Cir. May 24, 2004).

In June 1996, on the day the Grand Traverse band commenced casino operations at its Turtle Creek site, the Tribe brought a declaratory judgment action against the United States seeking a declaration that its gaming operations were legal. The United States counterclaimed and sought a preliminary injunction, arguing that the operations were illegal. The principal issue in the litigation was whether the Turtle Creek site was exempt from a general prohibition against gaming on lands taken into trust after October 17, 1988, because an exception to the prohibition applied: the exception for "lands taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. 2719(b)(1)(B)(iii). The State intervened as a defendant, arguing that the exception did not apply. The district court denied the U.S. motion for preliminary injunction and ultimately sought an opinion from the Department of Interior (DOI) as to whether the Turtle Creek land qualified for the "restoration of lands" exception. After a lengthy period of negotiations and discussions, and following developments in other litigation involving the "restored lands" exception, DOI opined that the exception did apply to the Turtle Creek site. When that opinion was rendered the United States was dismissed from the litigation, but the State continued to argue that the exception did not apply to Turtle Creek. After a trial, the district court (Judge Hillman) concluded that the exception did apply, and that the tribe's Turtle Creek casino was thus legal under the Indian Gaming Regulatory Act (IGRA). In a May 24, 2004 opinion, the Sixth Circuit affirmed based on Judge Hillman's "well-reasoned decision."

Citizens Exposing Truth About Casinos v. Norton, et al., No. 1:02-cv-01754-TPJ (D.D.C. Apr. 23, 2004).

In August 2002, Citizens Exposing Truth About Casinos (CETAC) filed a lawsuit in federal district court in Washington, DC, against the United States Department of Interior, BIA, challenging BIA's decision to take certain land near Battle Creek, Michigan, into trust for use by the Nottawaseppi Huron Band of Potawatomi Indians to construct a Class III gaming facility under the Indian Gaming Regulatory Act. CETAC argued that the decision was unlawful in several respects, including that the decision violated the National Environmental Policy Act (NEPA) because it had not prepared an Environmental Impact Statement (EIS). NEPA requires federal agencies to prepare an EIS for major federal actions that will significantly affect the quality of the human environment. To determine whether an EIS is required for a proposed federal action,



the agency prepares an Environmental Assessment (EA), which either concludes with a finding of no significant impact (FONSI), meaning that the agency need not prepare the more detailed EIS, or a finding of significant impact, which does require the agency to prepare the EIS. In this case, BIA had issued a FONSI, which CETAC challenged on several grounds.

The district court issued a ruling on April 24, 2004, which rejected many of CETAC's arguments, but found that the BIA had failed to take into account certain socio-economic and environmental impacts and to consider alternatives to improve the Tribe's economic conditions. The court sustained the temporary restraining order, which prevents the lands from being taken into trust until the BIA prepares a more detailed EA or an EIS. That process is on-going.

Taxpayers of Michigan Against Casinos v. Norton et al., No. 1:01-cv-00398-JR (D.D.C. Jan. 21, 2003)

In this suit, which is similar to the CETAC suit, a separate citizens group, Tax Payers of Michigan Against Casinos (TOMAC), convinced the federal district court in Washington, DC, that the BIA's decision to take certain lands into trust for use by the Pokagon Band of Potawatomi Indians to construct a gaming facility near New Buffalo, Michigan, violated NEPA by failing to take into account in its EA certain socio-economic impacts. In March 2004, the BIA presented the court with an EIS and renewed its motion for summary judgment, seeking relief from the temporary injunction preventing it from taking the lands into trust. In March 2005, the District Court found that the BIA's EIS was sufficient and dismissed TOMAC's remaining claims. The Pokagon Band of Potawatomi Indians is awaiting a decision from the DOI to complete the fee to trust acquisition process.

Taxpayers of Michigan Against Casinos and Baird v. State of Michigan et al., No. 122830 (Mich. Supreme Court July 30, 1994)

In June 1999, TOMAC also brought a declaratory judgment action in state court seeking a declaration that the Michigan legislature's approval of four tribal-state gaming compacts in 1998 by a resolution violated the Michigan Constitution because the resolution effected "legislation." Of the tribes involved the Little Traverse Bay Band of Odawa Indians, the Pokagon Band of Ottawa Indians, the Little River Band of Ottawa Indians, and the Nottawaseppi Huron Potawatomi, only the Little Traverse Bay Band and Little River Band currently operate casinos. TOMAC also argued that the compact provision providing that the Governor may amend the compacts without legislative approval violates the separation of powers doctrine of the Michigan Constitution and that the resolution approving the compacts was unconstitutional because it constituted a "local act."

On July 30, 2004, the Michigan Supreme Court rejected TOMAC's arguments that the original resolution amounted to "legislation" and that it constituted a "local act." However, the court remanded the case back to the Michigan Court of Appeals for a



decision on the question of whether the provision allowing for gubernatorial amendments was valid. The lower court did not have an opportunity to address that issue because it was not ripe at the time it considered the case. Since then, the Governor has not exercised her authority by signing an amendment purporting to allow the Little Traverse Bay Bands of Odawa Indians to open a second casino, in exchange for more tax revenue. The Michigan Supreme Court determined that the matter was now ripe for decision, but the Michigan Court of Appeals should have the opportunity to address the issue in the first instance. A decision is pending.

The Michigan Court of Appeals held oral argument on the amendment issue in December 2004.

VI. Western District of Michigan Training Initiatives

A. 2001

- February 2001 **Basic Fundamentals of Evidence Collection & Processing Techniques Training.** Co-sponsored by Hannahville Indian Community and FBI Indian Country Unit. The training was for federal, state, tribal and local law enforcement and criminal investigators at the Chip-In Casino and Resort, Wilson, Michigan
- May 2001 **Jurisdiction in Indian Country.** Sponsored by the Sault Ste. Marie Tribe of Chippewa Indians. The training was for tribal, state and local law enforcement, tribal court personnel, and tribal and county prosecutors. AUSA Jeff Davis was a presenter. The training was held at the Kewadin Casino in Sault Ste. Marie, Michigan.
- August 2001 **Great Lakes Native American Conference.** Co-sponsored by the BIA and OVC providing with the theme of Addressing Challenges Facing Our Native Communities, agenda topics included domestic violence, drugs, and violence in Indian Country. The conference was attended by federal, tribal and local law enforcement, social services, courts, tribal community members. AUSA Michael MacDonald was a presenter. The conference was held in Bloomington, Minnesota.
- August 2001 **Report Writing and Search Warrant Writing.** This training was sponsored by LECC. Participants included tribal police from the lower and upper peninsula. AUSAs Mark Courtade and Jeff Davis presented on search warrants and report writing. Two sessions were conducted; one at Bay Mills Resort in Brimley, Michigan and another at the Ramada Inn in Marquette, Michigan.



B. 2002

- March 2002 **Native American Issues Conference.** This conference was sponsored by WDMI for tribal, state and local law enforcement, tribal council members, county prosecutors in Southwest Michigan, and any interested community members. Presenters included USA Chiara, AUSAs Jeff Davis and Leslie A. Hagen. The conference was held at Southwestern Michigan Community College in Dowagiac, Michigan.
- June 2002 **Jurisdiction in Indian Country.** This training was sponsored by the Sault Ste. Marie Tribe of Chippewa Indians. The training was for tribal, state and local law enforcement, tribal court personnel, and tribal and county prosecutors. AUSA Jeff Davis was a presenter. The training was held at the Kewadin Casino in Sault Ste. Marie, Michigan.
- July 2002 **Great Lakes Native American Conference.** Co-sponsored by the BIA and OVC providing information about Domestic Violence and Sexual Assault in Indian Country to federal, tribal and local law enforcement, social services, courts, tribal community members. AUSA Leslie A. Hagen presented on forensic interviewing and preparing children to testify in court. The conference was held in La Crosse, Wisconsin.
- October 2002 **Law Enforcement Training.** AUSA Brian Lennon gave a presentation to tribal police on "Report Writing and Search Warrants." The seminar was held in Peshawbestown, Michigan sponsored by the Grand Traverse Band of Ottawa & Chippewa Indians.

C. 2003

- January 2003 **New Judges Seminar** sponsored by the Michigan Judicial Institute. This mandatory, week long training for new judges including tribal jurists in the state covered a wide range of topics. AUSA Leslie A. Hagen, along with co-presenter Judge Elizabeth Hines, did a section on domestic violence laws. Topics included in the presentation were lethality assessments, bond determinations, conditional release orders, sentencing, and monitoring defendants on probation.
- January 2003 **Magistrate Specialty Training Seminar** sponsored by the Michigan Judicial Institute. AUSA Leslie A. Hagen presented on the topic of domestic violence. Topics included in the presentation



were new domestic violence laws passed in the past year, full faith and credit for protection orders, lethality assessments, bond determinations, conditional release orders, sentencing, and monitoring defendants on probation. This training was also videotaped and broadcast via the Internet.

- March 2003 **Full Faith and Credit Conference** sponsored by the American Indian Law Center. The conference was held in Albuquerque, New Mexico. United States Attorney Margaret Chiara gave the keynote address and AUSA Leslie A. Hagen taught two sessions titled "Prosecutable Domestic Violence Cases." The sessions were attended by police, prosecutors, advocates, social workers and judges.
- March 2003 Louisiana District Attorneys Association conference titled **Collaborating to STOP Violence Against Women.** The conference was held in Baton Rouge, Louisiana. AUSA Leslie A. Hagen taught sessions titled "Domestic Violence: Best Practices in Prosecution" and "Sexual Assault: Best Practices in Prosecution." The sessions were attended by police, prosecutors, advocates, social workers and judges.
- March 2003
June 2003
July 2003 **Michigan's Family Independence Agency - Child Welfare Institute.**
This training was part of an eight week curriculum for new foster care and child protective services workers. Issues affecting the welfare of Native American children who are victims of abuse and/or neglect were addressed by AUSA Leslie A. Hagen.
- April 2003 **Michigan Coalition Against Domestic and Sexual Violence.**
The statewide training was for attorneys and legal advocates included tribal representatives. AUSA Leslie A. Hagen taught sessions titled "State and Federal Law Enforcement Response to Family Violence," "Prosecution of the Perpetrator-Michigan's Deferral Statute, Bond and Probation Revocation, Victims' Rights and Participation," and "Federal Crimes-Identifying Interstate Domestic Violence Crimes."
- April 2003 **Specialized Child Abuse Training** sponsored by tribes from Michigan, Wisconsin and Minnesota. The training was held in Green Bay, Wisconsin. AUSAs Leslie A. Hagen and Paul Lochner presented training on Forensic Interviewing of Children. Attending the training were police and social workers from many different tribes in all three states.



- April 2003 **Advanced Michigan Victim Assistance Academy** sponsored by Michigan State University titled "Best Practices in the Coordinated Community Response to Domestic Violence." Co-presenting at the training was Nicole E. Allen, PhD and AUSA Leslie A. Hagen. Attending the training were experienced social workers, advocates, police officers and prosecutors and comparable tribal representatives.
- April 2003 **Third International Domestic Violence, Sexual Assault, Stalking and Cyberstalking Conference** held in San Diego, California. Over 900 criminal justice and social service professionals including tribal participants were in attendance. AUSA Leslie A. Hagen presented on "Advocates and Confidentiality."
- May 2003 **Domestic Violence Police In-service Training** sponsored by the Michigan Commission on Law Enforcement Standards. AUSA Leslie A. Hagen taught the legal section of the course pursuant to the Michigan Commission on Law Enforcement Standards Curriculum.
- June 2003
July 2003
September 2003
October 2003
November 2003 **Full Faith and Credit: Using Federal, State and Tribal Law to Protect Survivors of Domestic Violence and Stalking.** This training was sponsored in part by the USAO. The training was for police, judges, prosecutors, court staff, advocates and the tribes. AUSA Leslie A. Hagen presented on the federal response to domestic violence crimes, including the Gun Control Act, VAWA crimes, and federal prosecution of crimes against women occurring on reservations. These trainings were held at various locations throughout the state of Michigan.
- June 2003 **Michigan Victim's Assistance Academy.** The Academy was sponsored by Michigan State University. Criminal justice, social service and health care professionals including tribal representatives participated. AUSA Leslie A. Hagen taught sessions titled "Victim's Expectations," and "Legal Update."
- July 2003 **Lake Superior Terrorism Conference.** This training was conducted at the Kewadin Hotel & Conference Center in Sault Ste. Marie, Michigan and sponsored by the USAO.
- July 2003 **Michigan Coalition Against Domestic and Sexual Violence.** AUSA Leslie A. Hagen was the instructor for a training on "Confidentiality" designed for advocates both state and tribal working on issues related to domestic violence, sexual assault, and child abuse.



- August 2003 **Great Lakes Native American Conference** in Sault Ste. Marie, MI was sponsored by WDMI. AUSAs Leslie A. Hagen and Paul Lochner conducted sessions on Forensic Interviewing.
- August 2003 **Eleventh Annual Four Corners Indian Country Conference** held in Albuquerque, New Mexico. AUSA Leslie A. Hagen instructed on "Federal Domestic Violence Laws."
- October 2003 **Governor's Task Force on Children's Justice.** AUSA Leslie A. Hagen served as facilitator for a focus group exploring the response by both Michigan's Family Independence Agency and domestic violence service provider programs in cases where children are present in a home during a crime of domestic violence. Issues involving the Indian Child Welfare Act were included. The focus groups were held in Detroit, Ann Arbor and Kalamazoo.
- October 2003 **Restoring Peace in Indian Country.** Hosted by the Little River Band of Ottawa Indians. AUSA Leslie A. Hagen presented a session entitled "Federal Domestic Violence Laws," covering the Violence Against Women Act, the Gun Control Act, and Full Faith and Credit.
- October 2003 **Michigan Statewide Conference on Child Abuse and Neglect.** AUSA Leslie A. Hagen and co-presenter Joyce Wright discussed "The Intersection of Domestic Violence and Child Welfare: Implications for Battered Women and Their Children."
- October 2003 **Domestic Violence: Law Enforcement Response & Federal Prosecution,** sponsored by the USAO. The training for tribal law enforcement and covered arrest authority, Project Safe Neighborhoods, the Violence Against Women Act, lethality assessment, and responding to domestic violence crimes in Indian Country. Sessions were held in Marquette and Manistee, Michigan. Speakers included AUSAs Jeff Davis, Brian Lennon, Tom Gezon and Leslie A. Hagen.
- November 2003 **The Wyoming Coalition Against Domestic Violence and Sexual Assault.** AUSA Leslie A. Hagen lectured on laws concerning confidentiality to state and tribal participants. The training was held in Casper, Wyoming.
- December 2003 **Ingham County Prosecutor's Office.** AUSA Leslie A. Hagen trained assistant prosecuting attorneys on the use of expert witnesses in domestic violence cases. The training was a mix of lecture and mock trial exercises. Herb Tanner, of the Prosecuting Attorney's Association of Michigan, served as co-presenter.



December 2003 **Mending the Sacred Hoop; STOP Violence Against Indian Women Technical Assistance Project.** The training was held in Green Bay, Wisconsin, and tribes from the regional area were in attendance. AUSA Leslie A. Hagen taught three different sessions of the conference: "Evidence Based Prosecution," "Use of Expert Witnesses in Domestic Violence Cases," and "Prosecuting Crimes in Indian Country." The training was for tribal police, prosecutors, and advocates.

D. 2004

June 2004 **Michigan Coalition Against Domestic and Sexual Violence Professional Development Training Workshop.** AUSA Leslie A. Hagen presented on "Federal Prosecution of Domestic Violence and Sexual Assault Cases Arising in Indian Country."

June 2004 **Civil Justice Project** sponsored by the Michigan Coalition Against Domestic and Sexual Violence, the Southwest Center on Law & Policy, and The Advocacy Resource Center of the Sault Ste. Marie Tribe of Chippewa Indians. AUSA Leslie A. Hagen served as an instructor and presented on "Federal Prosecution of Domestic Violence and Sexual Assault Cases Arising in Indian Country."

June 2004 A training hosted by the Michigan Coalition Against Domestic and Sexual Violence and the Prosecuting Attorneys Association of Michigan held at Michigan State University Law School. AUSA Leslie A. Hagen served as instructor on "The Use of Expert Witnesses in Domestic Violence Cases" designed for state and tribal advocates and prosecutors.

August 2004 **Great Lakes Native American Conference**, Sturgeon Bay, Wisconsin. The conference theme was "A Tradition of Healing: Putting Victims First." AUSA Leslie A. Hagen delivered a plenary session titled "Want to Make a Federal Case of It?" This presentation focused on proving a sexual assault or domestic violence case in federal court.

September 2004 **Michigan Coalition Against Domestic and Sexual Violence Criminal & Civil Justice Training Institute.** The statewide training was for attorneys and legal advocates including tribal representatives. AUSA Leslie A. Hagen session was titled "Federal Prosecution of Domestic Violence, Sexual Assault and Gun Cases."

September 2004 **Michigan Coalition Against Domestic and Sexual Violence.** AUSA Leslie A. Hagen served as instructor training on



“Confidentiality” designed for advocates working on issues related to domestic violence, sexual assault, and child abuse.

- September 2004 **Full Faith and Credit: Using Federal, State and Tribal Law to Protect Survivors of Domestic Violence and Stalking.** This training was sponsored in part by the USAO. The training was for police, judges, prosecutors, court staff, advocates and the tribes. AUSA Leslie A. Hagen presented on the federal response to domestic violence crimes, including the Gun Control Act, VAWA crimes, and federal prosecution of crimes against women occurring on reservations. These trainings were held in Canton and Benton Harbor, Michigan.
- October 2004 **Protecting Tribal Members & Communities from Domestic Violence,** Grand Traverse Resort, Traverse City, Michigan. AUSA Leslie A. Hagen presented on gun control and VAWA.
- October 2004
November 2004 **Michigan’s Family Independence Agency - Child Welfare Institute.** This training is part of an eight week curriculum for new foster care and child protective services workers. Issues affecting the welfare of Native American children who are victims of abuse and/or neglect was addressed by AUSA Leslie A. Hagen.
- October 2004 **Full Faith and Credit: Using Federal, State and Tribal Law to Protect Survivors of Domestic Violence and Stalking.** This training was sponsored in part by the USAO. The training was for police, judges, prosecutors, court staff, advocates and the tribes. AUSA Tom Gezon presented on the federal response to domestic violence crimes, including the Gun Control Act, VAWA crimes, and federal prosecution of crimes against women occurring on reservations. These trainings were held in Warren and Flint, Michigan.
- October 2004 **Grants to Encourage Arrests Training** sponsored, in part, by the USAO. This training was exclusively for the twelve federally recognized Indian tribes in the State of Michigan. AUSA Leslie A. Hagen presented on “Federal Domestic Violence Laws and The Gun Control Act.”
- December 2004 **Ninth National Indian Nations Justice for Victims Conference.** This national training was sponsored by the Office for Victims of Crime and the Office of Justice Programs, with the Department of Justice. The conference was coordinated by the Tribal Law and Policy Institute. The conference theme was “Reviving our Sacred Legacy: Lighting the Path to our Future.” USA Chiara participated in



a panel discussion on "Victims Rights in Multiple Jurisdictions." AUSAs Jeff Davis and Leslie A. Hagen co-presented a session titled "Federal Prosecution of Misdemeanor and Felony Violent Crimes in Indian Country."

VII. Indian Country Grants

During the period 2001-2004, the eleven federally recognized tribes located within the Western District of Michigan continued to be successful in competing for additional resources to benefit their respective tribal communities.

A grand total of \$11,878,350.00 was reported by the Department of Justice in grant awards to the tribal communities within the Western District of Michigan.

The grant awards received by the tribes are listed. In order to appreciate the resources secured by the tribes, a brief description of each grant is also provided. Because of the nature of the grant funding, the period covered by some grants either begins before 2001 or ends after 2004.

A. Grant Descriptions

STOP Violence Against Indian Women Discretionary Grant Program: The STOP (Services • Training • Officers Prosecutors) Violence Against Indian Women Discretionary Grant Program is intended to reduce violent crimes against Indian women by providing grants to Indian tribal governments to develop and strengthen the tribal justice system's response (including law enforcement, prosecution, victim services, and courts) to violence against Indian women and to improve services to victims of domestic violence, sexual assault, and stalking.

Victims of Crime Act Grant: Victims of Crime Act (VOCA) Program is intended to enhance and expand direct services to victims of crime with special emphasis placed on victims of domestic violence, child abuse, and sexual assault. VOCA victim assistance funding is utilized to develop new programs in under-served victim populations and geographic areas or to enhance successful programs.

Rural Domestic Violence and Child Victimization Enforcement Grant: The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, and child abuse by supporting projects uniquely designed to address and prevent these crimes in rural America.

Indian Alcohol and Substance Abuse Program: The purpose of the Indian Alcohol and Substance Abuse Program is to reduce crimes associated with the distribution and use of alcohol and controlled substances in tribal communities. The program seeks to mobilize tribal communities to implement or enhance innovative,



collaborative efforts that address public safety issues related to alcohol and substance abuse.

2004 Tribal Criminal History Record Improvement Pilot Program: The Tribal Criminal History Record Improvement Pilot Program provides support to federally recognized Tribes and State criminal records repositories to promote participation in and improve the interface among tribal, State, and national criminal records systems.

Tribal Youth Program: Juvenile justice systems in tribal communities are chronically underfunded and lack comprehensive programs that focus on preventing juvenile delinquency, providing intervention services, and imposing appropriate sanctions. Tribal Youth Program is designed to support and enhance tribal efforts to prevent and control delinquency and improve the juvenile justice system for American Indian and Alaska Native (AI/AN) youth.

Tribal Courts Assistance Program: The goal of TCAP is to develop new tribal courts, improve the operations of existing tribal courts, and provide funding for technical assistance and training of tribal court staff. The objective in reaching this goal is to help tribal governments develop, enhance, and continue operation of tribal judicial systems, including intertribal court systems.

Community Oriented Policing Services Grant: The Community Oriented Policing Services Office (COPS) offers grants to help law enforcement agencies hire more community policing officers, acquire new technologies and equipment, hire civilians for administrative tasks, and promote innovative approaches to solving crime.

Drug Court Discretionary Grant Program: The Drug Court Discretionary Grant Program provides assistance to tribal governments to develop and implement treatment drug courts that effectively integrate substance abuse treatment, mandatory drug testing, sanctions and incentives, and transitional services in a judicially supervised court setting with jurisdiction over nonviolent, substance-abusing offenders.

Correction Facilities on Tribal Lands Program: The Correctional Facilities on Tribal Lands Program provides funds to American Indian and Alaska Native tribes to construct correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

Grants to Encourage Arrest Policies and Enforcement of Protection Orders: This program encourages jurisdictions to implement mandatory or pro-arrest policies and effective intervention that is part of a coordinated community response to domestic violence.

Tribal Victim Assistance: The Tribal Victim Assistance (TVA) discretionary grant program (an expansion of the former Victim Assistance in Indian Country grant program) makes grant awards available to Indian tribes and tribal organizations to establish victim assistance programs in remote areas of Indian Country.



Children's Justice Act Partnerships for Indian Communities: This program funnels resources to Indian tribes to develop, establish, and operate programs to improve the investigation, prosecution, and handling of child abuse cases, particularly cases of child sexual abuse, in a manner that limits additional trauma to child victims.

Civil Legal Assistance Programs for Victims of Domestic Violence: This program provides funds to support or provide direct legal services on behalf of the victims in civil matters related directly to the domestic violence including family court, immigration, administrative agency, or housing matters, protection or personal protection order proceedings, and other similar matters.

B. Tribal Awards

Bay Mills Indian Community

Two S.T.O.P. (Services • Training • Officers Prosecutors) grants were received from the Office on Violence Against Women (OVW) for the period of October 1997 through June 2006 with a total amount of \$215,138.

A Tribal Youth Program grant was received from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for the period of October 2000 through September 2005 with an amount of the \$75,000.

A Victim Assistance in Indian Country grant was received from the Office of Victims of Crime (OVC) for the period of March 2001 through June 2003 with an amount of \$50,138.

A Rural Domestic Violence and Child Victimization Enforcement grant was received from the OVC for the period of October 2001 through September 2003 with an amount of \$43,407.

Grand Traverse Band of Ottawa and Chippewa Indians

Four Community Oriented Policing Services (COPS) grants for equipment and training were received from the Bureau of Justice Assistance (BJA) for the period of August 2001 through August 2005 with a total amount of \$506,373.



Three COPS grants for salaries and benefits were received from the BJA for the period of August 2001 through August 2005 with a total amount of \$262,204.

Two Tribal Youth Program grants were received from the OJJDP for the period of October 2000 through September 2007 with a total amount of \$378,381.

A Children's Justice Act Partnership grant was received from the OVC for the period of July 2001 through June 2005 with an amount of \$65,100.

A Drug Court Planning grant was received from the BJA for the period of October 2001 through March 2003 with an amount of \$30,000.

A Drug Court Implementation grant was received from the BJA for the period of September 2003 through August 2006 with an amount of \$485,479.

A Tribal Victim Assistance, formerly Victim Assistance in Indian Country, grant was received from the OVC for the period of September 2003 through August 2005 with an amount of \$56,857.

A Victim Assistance in Indian Country grant from the OVC for the period of April 1999 through September 2003 was received with an amount of \$52,908.

A Tribal Court Assistance grant was received from the BJA for the period of October 2003 through September 2005 with an amount of \$84,234.

An Indian Alcohol and Substance Abuse Program grant was received from the BJA for the period of May 2004 through April 2007 with an amount of \$468,308.

Hannahville Potawatomi Indian Community

Two S.T.O.P. grants were received from the OVW for the period of September 1995 through June 2005 with a total amount of \$253,255.

Four COPS grants for equipment and training were received from the BJA for the period of September 1999 through August 2005 with a total amount of \$340,101.



Two Tribal Youth Program grants were received from the OJJDP for the period of October 1999 through December 2004 with an amount of total \$100,000.

Two COPS grants for salaries and benefits were received from the BJA for the period of August 2001 through July 2005 with a total amount of \$300,000.

A Victims of Crime Act (VOCA) grant was received from the OVC for the period of October 2001 through September 2005 with an amount of \$51,875.

Keewenaw Bay Indian Community

A VOCA grant was received from the OVC for the period of October 2001 through June 2005 with an amount of \$67,440.

Two COPS grants for equipment and training were received from the BJA for the period of September 2003 through August 2005 with a total amount of \$133,628.

A COPS grant for salaries and benefits was received from the BJA for the period of September 2003 through August 2005 with an amount of \$225,000.

Lac Vieux Desert Band of Lake Superior Chippewa Indians

A Victim Assistance in Indian Country grant from the OVC for the period of November 1999 through June 2003 was received with an amount of \$42,423.

Two S.T.O.P. grants were received from the OVW for the period of July 2001 through June 2005 with a total amount of \$266,750.

Four COPS grants for equipment and training were received from the BJA for the period of August 2001 through August 2005 with a total amount of \$204,805.

A Rural Domestic Violence and Child Victimization Enforcement grant was received from the OVW for the period of July 2004 through June 2006 with an amount of 165,650.



A COPS grant for salaries and benefits were received from the BJA for the period of August 2002 through July 2005 with an amount of \$150,000.

Little River Band of Ottawa Indians

Two COPS grants for equipment and training were received from the BJA for the period of August 2002 through August 2005 with a total amount of \$240,109.

A S.T.O.P. grant was received from the OVW for the period of March 2002 through March 2004 with an amount of \$50,000.

Little Traverse Bay Band of Odawa Indians

A COPS grant for salaries and benefits was received from the BJA for the period of September 1999 through April 2007 with an amount of \$5,391.

A Drug Court Planning grant was received from the BJA for the period of September 2001 through January 2003 with an amount of \$30,000.

A Tribal Court Assistance grant was received from the BJA for the period of October 2003 through December 2006 with an amount of \$89,217.

An Indian Alcohol and Substance Abuse Program grant was received from the BJA for the period of May 2004 through April 2007 with an amount of \$391,574.

Two COPS grants for equipment and training were received from the BJA for the period of September 2004 through August 2005 with a total amount of \$89,592.

A Tribal Youth Program grant was received from the OJJDP for the period of October 2004 through September 2007 with an amount of \$138,059.

A Tribal Criminal History Record Improvement Pilot Program grant was received from the Bureau of Justice Statistics (BJS) for the period of October 2004 through September 2005 with an amount of \$139,222.



A S.T.O.P. grant was received from the OVW for the period of July 2004 through June 2006 with an amount of \$61,309.

Nottawaseppi Huron Band of Potawatomi Indians

A Tribal Court Assistance grant was received from the BJA for the period of October 2004 through December 2006 with an amount of \$99,545.

Pokagon Band of Potawatomi Indians

Two COPS grants for equipment and training were received from the BJA for the period of August 2001 through December 2006 with a total amount of \$688,524.

A Tribal Court Assistance grant was received from the BJA for the period of October 2003 through December 2005 with an amount of \$150,000.

Sault Ste. Marie Tribe of Chippewa Indians

A VOCA grant was received from the OVC for the period of October 1989 through September 2005 with an amount of \$100,767.

Two S.T.O.P. grants were received from the OVW for the period of September 1996 through June 2005 with a total amount of \$414,262.

Two Tribal Victim Assistance, formerly Victim Assistance in Indian Country, grants were received from the OVC for the period of April 1999 through August 2005 with a total amount of \$137,633.

Two Rural Domestic Violence and Child Victimization Enforcement grants were received from the OVW for the period of August 1999 through April 2007 with a total amount of \$704,761.

Four COPS grants for equipment and training were received from the BJA for the period of August 2001 through August 2005 with a total amount of \$748,790.



A COPS grant for salaries and benefits was received from the BJA for the period of August 2001 through July 2005 with an amount of \$150,000.

Two Correctional Facilities on Tribal Lands Program grants were received from the BJA for the periods of September 2001 through December 2004 with a total amount of \$1,802,925.

Three Tribal Youth Program grants were received from the OJJDP for the period of October 2001 through September 2007 with a total amount of \$792,911.

A Civil Legal Assistance for Victims of Domestic Violence Program grant was received from the OVW for the period of October 2001 through September 2005 with an amount of 335,972.

Two Tribal Court Assistance grants were received from the BJA for the period of January 2002 through June 2006 with a total amount of \$305,455.

**VII. Western District of Michigan Newsletter,
*Bedohgeimo***

Bedohgeimo

"Talking to Everyone"

A NEWSLETTER FROM THE UNITED STATES ATTORNEY'S OFFICE,
WESTERN DISTRICT OF MICHIGAN

From the Desk of the United States Attorney

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I am the first woman to serve as a presidentially appointed United States Attorney in Michigan. I recognize and accept my responsibility to the eleven federally recognized sovereign nations in the Western District of Michigan. Is it a privilege to work with tribal leadership on matters of mutual interest and concern.

After completing my first government-to-government tour in September 2001, I realized that increased attention was required to improve the quantity and quality of service by the United States Attorney's Office in Indian Country.

Substantial and sustained effort has been expended to accelerate the response rate on investigations and prosecutions to tribal law enforcement. Clear and consistent communication is essential between the Tribes and the United States Attorney's Office. The position of tribal liaison is crucial to our ability to effectively work together for the benefit of Indian Country. Therefore, the primary focus of Western District of Michigan tribal liaison Jeff Davis is to listen, to connect, and to follow up on tribal issues and concerns. This newsletter is one of several projects



United States Attorney
Margaret M. Chiara

to promote communication.

An Indian Country Unit has been established within the criminal division of the United States Attorney's Office.

(Continued on page 2)

Greetings from the Tribal Liaison



Jeff J. Davis

Boozhoo, Ahnii, Happy New Year to all! I hope that everyone had an opportunity to spend time with family and friends during the holiday season.

The newsletter, known as "Bedohgeimo," is intended to provide another vehicle of communication between the federally recognized Tribes in the Western District of Michigan and the United States Attorney's Office.

Bedohgeimo is an Ojibwa word that means "talking to everybody." We chose this word to emphasize the importance of candid and consistent dialogue between the United States and the sovereign nations.

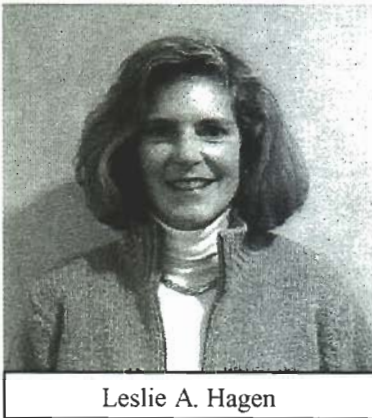
The artwork was specifically selected for the newsletter. The artist is Dave Shananaquet. Mr. Shananaquet is a member of the Little Traverse Bay Band of Odawa Indians. His artwork is prominently displayed

in many of the tribal governmental offices, casinos, and hotels in the Great Lakes area. You may recall, Mr. Shananaquet also created the logo for the 2003 Great Lakes Native American Conference, which was held in Sault Ste. Marie, Michigan. Mr. Shananaquet's work is based on and depicts traditional teachings of the Woodland peoples of the Great Lakes.

According to Mr. Shananaquet, Migizi (the Bald Eagle), has an ability to soar to great heights and to bring the Anishinaabe's (First People) prayers to the great spirit.

(Continued on page 4)

Investigating and Prosecuting Child Sexual Abuse Crimes: A Coordinated Approach



Leslie A. Hagen

Imagine that six-year-old Lauren, an Indian living on the reservation, discloses to her mother that mom's boyfriend "touched her private parts." Lauren's mom stopped seeing the man in question six months ago and she is certain that Joe has had no contact with Lauren since their break-up. Mom immediately calls the police. How should this investigation be handled? Does Lauren need to be taken immediately to the emergency room for an examination? Who should interview Lauren? Who should interview Joe? In what jurisdiction will the trial be held?

Child sexual assault cases are among the most difficult cases to take to trial. Unfortunately, child sexual assault is a prevalent crime across the United States. How the above listed questions are answered is critical. The manner and duration of the investigation process can directly affect the impact on the child and the success of prosecution. In addition, the investigation methods used will influence what evidence will later be deemed admissible at trial.

The Major Crimes Act, 18 U.S.C. § 1153,

provides federal criminal jurisdiction over certain specified crimes if the offender is Indian. Sexual abuse crimes are contained within the Major Crimes Act. The Indian Country Crimes Act, 18 U.S.C. § 1152, applies where either (1) the offender is not an Indian, but the victim is, or (2) the offender is Indian, but the victim is not, the crime is a non-§ 1153 crime, and the Indian offender has not already been punished by the Tribe for that conduct. Because of the crime involved in this case, when the victim is an Indian, regardless of the race or ethnicity of the perpetrator, the federal government will have jurisdiction over the case. Therefore, it is important that the Federal Bureau of Investigation special agent and/or Bureau of Indian Affairs agent working with your tribe be contacted as soon as the complaint is made.

Lauren *must* be interviewed by someone trained and experienced in forensic interviewing. Forensic interviewing is a phased interview process designed to minimize suggestive influences and to empower children to be informative. In state court, Michigan's Child Protection Law requires that children who are suspected of being victims of physical or sexual abuse be questioned using the forensic interviewing protocol adopted by the Family Independence Agency. Tribes are not obligated to use Michigan's forensic interviewing protocol, and there are other forensic interviewing protocols available. The most important issue is that a recognized forensic interviewing protocol be used by the investigator. The goal of a forensic interview is to obtain a statement from a child, in a developmentally sensitive, unbiased and truthseeking manner, that will support accurate and fair decision-making in

the criminal justice and child welfare systems. (See Michigan Forensic Interviewing Protocol p.1, 1998). Therefore, if a child sexual assault allegation is made, tribal investigators should consult with the Assistant United States Attorney, Bureau of Indian Affairs, and Federal Bureau of Investigation special agent working the case to discuss and agree on the person to do the forensic interview of the child. Interviews by untrained personnel have, at times, been deemed too suggestive by the court; the remedy in such a case can be that the child's testimony is excluded at trial. Careful selection of the interviewer and adherence to a forensic interviewing protocol can avoid this trial complication.

Physical findings confirming that a child has been sexually assaulted are very rarely found. In the case of Lauren, she has described an act of fondling or touching of the genitalia. Typically an act of fondling or touching would not be expected to leave physical evidence or injuries. And, in this case, Lauren's mother believes the act would have occurred at least six months prior to the child's report of abuse. Thus, there is no need for this child to be rushed to the local emergency room for an examination. Many local emergency physicians do not have specialized training in pediatric sexual assault, nor do local hospitals have specialized equipment, like a colposcope, that can aid doctors in finding injuries or trace evidence. If examination by a specialist is warranted, it can be facilitated through the Federal Bureau of Investigation, the Bureau of Indian Affairs and the United States Attorney's Office.

(Continued on page 4)

From the Desk of the United States Attorney

(Continued from page 1)

Deputy Criminal Chief Brian Lennon has the supervisory responsibility for the implementation of policies and procedures and Ellen Farrar provides professional support services to the unit. Leslie Hagen, who is an experienced trainer and litigator, joined the staff of the United States Attorney's Office in October 2002 with the specific assignment to address the pervasive problem of violent crime in

Indian Country. Janet Strahan has been designated the federal victim advocate for Indian Country. Both Leslie and Janet have many years of experience working with law enforcement to effectively investigate and prosecute family violence and sexual assault of women and children. There are also designated attorneys for cases involving fraud and other forms of "white collar" crime and for the civil and criminal aspects of gaming in Indian Country.

Our Indian Country policies, procedures and practices have been developed in consultation with the Tribes. To be in right relationship with our tribal colleagues; to work together in a "good way" is a priority of my tenure as United States Attorney.

Margaret M. Chiara

Violence Against Women is Not a Tribal Tradition

Violence against women is a virtual epidemic. Since September 11, 2001, America's focus has been homeland security. We are regularly informed about terrorist alerts, the sightings of al-Qaida and other radical extremist organizations. We are a nation at war and the MO of terrorism is death and destruction. Many of us are confronted daily and directly with issues of *domestic terrorism* and *close-to-homeland security* due to the insidious persistence of violence against women and girls. We know that the greatest threat comes not from strangers or members of terrorist cells, but rather, from husbands, boyfriends, and other male acquaintances.

The reality is that an estimated 683,000 rapes occur annually in the United States. In the state of Michigan, there are over 60,000 crisis calls to shelters each year. Every year dozens of Michigan women are murdered by intimate partners. The statistics are staggering. Women are disproportionately the victims of domestic violence. In 1998, almost one million violent crimes were committed against persons by their current or former spouses or boyfriends. Domestic violence is the leading cause of injury to women in this country, accounting for more injuries than auto accidents, stranger rapes, and muggings combined. At any given time, at least 10% of women are being abused by a current or former husband or boyfriend. Twenty-five percent of all marriages include physical abuse. One third of all women who seek treatment in hospital emergency units are domestic violence victims and approximately 1/3 of female homicide victims are killed by their husbands or boyfriends.

Domestic violence in Indian Country is exacerbated by dismal social and economic conditions that often exist on the reservation. According to the Department of Justice, Native American women are more than twice as likely as non-Native American women to be victims of violent crime. However, as accurately stated by *Sacred Circle*, "*violence against Native American women is not traditional.*" Violent victimization of both males and females are higher among American Indians than other races. Crimes of violence against American Indian women are nearly 50% higher than that reported by black males. Who are the perpetrators of these crimes? At least 70% of the violent victimization of American Indians is committed by persons not of the same race, a substantially higher rate of interracial violence than that experienced by white or black victims.

Given the 1978 United States Supreme Court decision in *Oliphant*, the Federal Government has an opportunity and an obligation to become involved in violence against women cases committed by non-Indians in Indian Country. What can a federal prosecutor do? I say, enough to make a difference.



BIIMADZIIK

The 1994 Violence Against Women Act created two statutes that federalize domestic violence crimes. It is a crime to cross state lines to commit domestic violence or sexual assault, or to violate a protective order. Interstate stalking and cyberstalking are also prohibited by the Violence Against Women Act. The Federal Gun Control Act, enacted in 1994 and amended in 1996, makes it a federal crime to possess a firearm or ammunition if convicted of domestic assault or subject to a valid protection order. In Michigan, recent statistics indicate that 41% of domestic violence homicides were committed with a firearm. Domestic violence is a crime with a high degree of recidivism and escalating violence. We need to couple an aggressive domestic violence initiative with rigorous enforcement of the federal gun laws.

Most prosecutions for violence against women are based on the Major Crimes Act, which creates federal jurisdiction over 13 crimes. They include murder, manslaughter, kidnapping, sex crimes, assault with intent to commit murder, assault with a dangerous weapon and assault resulting in serious bodily injury. The Major Crimes Act is applicable to all perpetrators in Indian Country. Domestic violence has the potential for horrific consequences. However, domestic assaults may not

involve permanent physical injury. Consider the following: If the victim survives the attack and no weapon is used in the assault, the Major Crimes Act offers only one option, "assault resulting in serious bodily injury." According to the statute, "serious bodily injury" is that which causes a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member organ, or mental faculty. Prosecution is definitely required. The victim must be protected. The perpetrator should be held accountable. The problem is meeting the evidentiary requirements. More statutory options are needed to address the dangerous consequences between simple assault and the extreme situations covered by the Major Crimes Act.

Victims of domestic violence and their children can be protected from the assailant and the "double standard" eliminated. By "double standard," I refer to tribal police arrest authority over Indians but their inability to incapacitate non-Indians who threaten violence or actually assault Native American women. Western Michigan has addressed this obstacle by developing and implementing the non-Indian misdemeanor docket. Tribal police are empowered in their capacity as first responders to enforce federal law by issuing citations to non-Indian offenders. (Please refer to the article on page five which discusses why citations should not be used for domestic or family violence situations.)

I am aware that some say that the Federal Government only pays attention to violence against Native American women when there's a homicide in Indian Country! The Western District of Michigan has within its boundaries the largest population of Native Americans in a district east of the Mississippi. We have made a tangible commitment to prosecute violence against women and other forms of violent crime in Indian Country. It is a priority in our District!

Margaret M. Chiara
United States Attorney
Western District of Michigan

Dave Shananaquet's painting captured the 2003 Great Lakes Native American Conference theme, BIIMADZIIK, that is, Living in Right Way. It depicts a native family encompassed by the circle of life. The feathers represent the seven grandfather teachings and the strawberries are symbolic of the heart.

Greetings From the Tribal Liaison

(Continued from page 1)

The four stick figures below Migizi represent the four races of man. As explained by Mr. Shananaquet, our skin color may differ but we are otherwise equal and interconnected. The seven stars encircling Giizis (Moon) represent our seven grandfather teachings that Gitche Maniit (Creator) gave to the Anishinaabe. These seven teachings focus on the principles of Wisdom, Love, Respect, Bravery, Honesty, Humility, and Truth. The floral pattern that borders the painting is representative of the Woodland Tribes of the Great Lakes: the Boodewaadamii (Potawatomi) keepers of the sacred fire; the Odawa (Ottawa) the traders; and the Ojibwa (Chippewa) the big brother. These tribes are also known as the Three Fires Confederacy. Finally, the coloration in the painting is the color of the earth and sun and represents the spirits from the four directions; the prongs to the circle of life that we as Indian people hold as our center.

The newsletter name and logo is purposeful. They remind those of us who work in Indian Country that the interaction between the United States and the Tribes is based on a government-to-government relationship. The sovereign status of the eleven federally recognized Tribes in northern and western Michigan is of paramount



importance. Tribal sovereignty is inherent; it cannot be bestowed by others. The power to self govern, to act with authority and jurisdiction cannot be limited unless specifically relinquished. One need only look to the historic treaties for guidance when considering the concept of tribal sovereignty.

Communication between the United States Attorney's Office, which is the primary federal law enforcement agency with civil and criminal jurisdiction, and the

sovereign Tribes is essential to working in right relationship. Both must listen and speak for communication to be effective.

The primary function of a tribal liaison is to promote communication between the Tribes, the United States Attorney's Office and federal agencies. I can only be of assistance to you if you timely communicate your problems and concerns. Indian Country attorneys and support staff have expended substantial effort over the past two years to improve their ability to timely respond and to provide quality service.

Communication must be consistent despite the inevitable disagreements or disappointments that occur. We will not always agree on the best course of action. We can always continue the dialogue despite our differences. I am available to take questions from all of the Tribes on any matter of interest or concern. You will be referred to the person or program that can address the matter that you have brought to our attention.

I truly enjoy my assignment in Indian Country. I look forward to working with you in 2004.

Jeff J. Davis
Assistant United States Attorney
Indian Country Liaison

Investigating and Prosecuting Child Sexual Abuse Crimes: A Coordinated Approach

(Continued from page 2)

Coordination and cooperation is key in child sexual abuse cases. Bringing the Federal Bureau of Investigation, the Bureau of Indian Affairs and the United States Attorney's Office into the case when the complaint is made can reduce the number of interviews of the child victim and other witnesses. Also, the child victim may avoid multiple invasive physical examinations. Contacting the "feds" as soon as the initial complaint is made can also reduce the amount of time it takes to bring a case to court. This is very important when young children are involved because of the potential for a "fading memory" of details and events surrounding the crime.

The federal law, 18 U.S.C. § 3509(g), provides for enhanced tribal/federal cooperation and coordination through the creation and

use of multidisciplinary child abuse teams (MDT). According to the statute, a MDT shall be used when it is feasible to do so. The team can meet in person or by telephone. The role of the team is to provide for child services that members of the team in their professional roles are capable of providing. These services include: medical diagnosis and evaluation services; medical evaluations related to abuse or neglect; psychological and psychiatric diagnoses and evaluation services for the child or parent; expert medical, psychological and related professional testimony; case service coordination and assistance; and training services for judges, litigators, court officers and others involved in child victim and child witness cases. As is evident in the case of Lauren, some of these services may be necessary to help her and her mother as the investigation concerning Joe unfolds. The United States

Attorney's Office, the Bureau of Indian Affairs, and the Federal Bureau of Investigation in the Western District of Michigan are committed to attending and participating in MDT meetings called by the Tribes.

The best result for Lauren, and children in a similar position, is obtained when the "feds" and the Tribes are working together "in a good way" for the benefit of the victim and in the interest of justice. In this case, the interest of all parties is furthered by the federal government being involved in the case as early as possible. A combined effort is the most effective way to protect victims and to hold accountable those individuals who sexually assault children.

Leslie A. Hagen
Assistant United States Attorney
Violent Crime in Indian Country

OPPORTUNITIES FOR GRANT FUNDING

Several federal-level grants have become available to assist tribal programs. Included below are brief descriptions of funding criteria, application due dates (if listed), and contact information. If you are interested in obtaining more information on a particular grant, please contact the funding source directly. If you have problems accessing the web site, please contact Janet Strahan at (616) 456-2404, ext. 3140.

FY 2004 Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program

The Grants to Encourage Arrest Program is designed to encourage communities to adopt a coordinated community response (CCR) in the treatment of domestic violence as a serious violation of criminal law. This program challenges the entire community to listen, communicate, identify problems, and share ideas that will result in new responses to ensure victim safety and offender accountability. Application deadline is February 25, 2004. For more information, go to www.ojp.usdoj.gov/vawo/applicationkits.htm.

Single Jurisdiction Enhancement Drug Court Grants (BJA)

The goal of the drug court discretionary grant program is to provide funding and technical assistance to state, local, tribal, and territorial jurisdictions to implement and enhance drug court programs. Single jurisdiction enhancement grants are available to any jurisdiction that already has a fully operational drug court. Drug court programs target nonviolent substance abusing offenders in an effort to reduce drug use and recidivism. Deadline for registration is February 24, 2004, and applications are due February 27, 2004. For more information, go to www.ojp.usdoj.gov/guidelinesinfo.htm

Family Drug Court Implementation Grants (BJA)

Adult Drug Court Implementation Grant Program (BJA)

Juvenile Drug Court Implementation Grants (BJA)

The goal of the drug court discretionary grant program is to provide funding and technical assistance to state, local, tribal, and territorial jurisdictions to implement and enhance drug court programs. Drug court programs target nonviolent substance abusing offenders in an effort to reduce drug use and recidivism. Registration deadline is February 24, 2004, and applications are due February 27, 2004. For more information, go to www.ojp.usdoj.gov/guidelinesinfo.htm

Prosecuting Non-Indian Perpetrators of Domestic Violence

Tribal police have limited detention and arrest authority over non-Indians. Most tribal officers in Michigan have special law enforcement commissions that authorize them to enforce federal law. This authority is limited, however, to individuals who commit a felony crime or individuals who commit a misdemeanor in the police officer's presence. Typically, however, most domestic violence offenders leave the scene prior to the arrival of law enforcement.

In order to address non-Indians committing misdemeanor crimes on the reservation, the "non-Indian misdemeanor docket" was created. Tribal police officers issue tickets that are processed through the United States Central Violations Bureau (CVB) in San Antonio, Texas. Depending on the offense charged, a defendant issued a ticket under the non-Indian misdemeanor docket may have to appear before a federal magistrate judge. And, in some instances, the defendant has the option of paying a pre-set "collateral" (fine) in lieu of appearing in court on the designated date, if he or she does not wish to contest the matter. This appearance date is almost always several

months later than the offense date.

Using the CVB ticket in domestic violence cases is problematic. With a ticket, the defendant is not placed in custody nor is there a court order prohibiting him from having contact with the victim. This means that, soon after the police leave the scene of the domestic violence, the defendant can legally be right back in the home harassing or assaulting the victim and/or witnesses to the earlier incident. Domestic violence crimes have a higher risk of lethality than most other crimes. Continued contact between the defendant and victim can have fatal consequences.

If called to a domestic violence situation and an arrest is desired, the responding officer should assess the circumstance to determine whether the facts establish probable cause to arrest for a felony. If there is no probable cause for a felony arrest, the responding police officer should contact an Assistant United States Attorney on the Indian Country team for assistance. Depending on the circumstances, an individual can be charged by complaint or information with a federal misdemeanor. An attempt will be made to get the

defendant in front of a United States Magistrate Judge as soon as possible. This will allow the United States Attorney's Office to request detention or bond conditions for the protection of the victim and/or witnesses.

If a CVB citation is issued in a domestic violence case, the police officer needs to immediately fax a copy of the ticket to the United States Attorney's Office. Our office does not receive notice of the defendant's scheduled court appearance from the United States Central Violations Bureau in San Antonio until approximately 3 to 5 days before the hearing. The hearing date will be several months after the offense date. If the prosecutor has earlier notice of the incident, a complaint or information could still be issued. In order to protect the safety of the victim and the welfare of her or his children, the defendant needs to be under the jurisdiction of the court.

*Leslie A. Hagen
Assistant United States Attorney
Violent Crime in Indian Country*

Indian Country Case Update

UNITED STATES v. CARL D. CAMERON, JR. (Bay Mills Indian Community - Abusive Sexual Contact with a Minor). On January 23, 2004, Carl D. Cameron, Jr., of Brimley, Michigan, was sentenced in federal court to 6 months in prison followed by 2 years supervised release. The defendant also was ordered to pay a \$300.00 fine and perform 100 hours of community service for a non-profit organization. Cameron pled guilty late last year to one count of abusive sexual contact with a minor. The assault occurred January 27, 2003, on land held in trust for the use of the Bay Mills Indian Community. The defendant is a member of the Bay Mills Indian Community. The minor victim is not a tribal member. AUSA Leslie A. Hagen prosecuted the case for the United States.

UNITED STATES v. SEVERO GARCIA-MEZA (Grand Traverse Band - Murder; Assault with a Deadly Weapon). On November 4, 2003, Severo Garcia-Meza was sentenced to life in prison for the murder of his wife, Kathleen Floyd Garcia, and to a concurrent term of 10 years in prison for the aggravated assault of the victim's then 12-year-old son. In September 2003, the defendant was convicted of first-degree murder and aggravated assault by a federal jury in Kalamazoo, Michigan. On February 23, 2002, Garcia-Meza argued with his wife Kathleen Floyd Garcia before stabbing her through the heart with a knife. He also slashed the arm of the victim's son when the boy tried to protect his mother. Kathleen Floyd Garcia died within minutes of the assault, leaving five children under the age of 15 without a parent. AUSA Lloyd K. Meyer and Andrew B. Birge prosecuted the case for the United States.

UNITED STATES v. ANGELECH LOUISE HALL (Hannahville Indian Community - Theft from a Tribal Organization). On November 24, 2003, Angelech Louise Hall, 27, of Bark River, Michigan, pled guilty to criminal information charging her with theft from a tribal organization. Hall, a non-Indian, was employed as an assistant manager at the Island Oasis Convenience Store, which is owned and operated by the Hannahville Indian Community. In October 2002, Hall created fraudulent bottle deposit returns, taking the cash and converting the money to her own use. As part of her plea agreement, Hall agreed to pay \$8,000 in restitution to the Hannahville Indian Community. She will be sentenced on March 23, 2004. AUSA Paul D. Lochner prosecuted the case for the United States.

UNITED STATES v. JOHN LYNN KAVO (Bay Mills Indian Community - Aggravated Sexual Abuse by Force). On August 21, 2003, John Lynn Kavo pled guilty in federal court to an indictment charging him with aggravated sexual abuse by force. On April 6, 2003, Kavo asked the victim for a ride to his home. Once they arrived at Kavo's home, Kavo refused to leave the victim's vehicle and began to kiss and fondle her. Kavo picked up the victim, putting her over his shoulder, and physically carried her to the basement of his home where he sexually assaulted her. Both Kavo and the victim are enrolled members of the Bay Mills Indian Community. Kavo was sentenced in federal court on January 26, 2004, for one count of Aggravated Sexual Abuse by Force, in violation of Title 18, United States Code, Section 2241(a)(1). The crime is punishable by up to life imprisonment. The defendant was sentenced to a term of 121 months incarceration and 3 years supervised release upon discharge from prison. The defendant was ordered to pay fines in the amount of \$5,400.00. AUSA Leslie A. Hagen prosecuted the case for the United States.

UNITED STATES v. ALBERT J. KAPPELL (Keweenaw Bay Indian Community - Child Sexual Assault). On October 10, 2003, a jury sitting in Marquette, Michigan, convicted Albert J. Kappell, of Appleton, Wisconsin, of nine counts of sexual abuse of two young girls. The victims, who were 3 and 6 years of age when Kappell assaulted them, are members of the Keweenaw Bay Indian Community. Kappell, a non-Indian and previously convicted child molester, repeatedly abused the young girls, including acts of penile and digital penetration, during a 6 month period in 2001 and 2002 when he lived with the girls' mother. Several of the acts of sexual abuse were committed on Christmas Day 2001. Kappell will be sentenced on March 1, 2004, and he faces a maximum sentence of life in prison. AUSAs Leslie A. Hagen and Michael A. MacDonald prosecuted the case for the United States.

UNITED STATES v. JACOB JOHN KESHICK (Hannahville Indian Community - Assault with a Dangerous Weapon). On September 24, 2003, Jacob John Keshick, of Mount Pleasant, Michigan, pled guilty to a criminal information charging him with assault with a dangerous weapon. On July 1, 2003, Keshick, a non-Indian, entered the home of an Indian male, without permission. While the victim was sleeping in his bed, Keshick jumped on top of him and began striking him in the face and head with his fists. Keshick then stabbed the victim in the chest with a steak knife. The victim's home was situated on land held in trust by the United States for the use of the Hannahville Indian Community. The victim received several stitches to close the stab wound and surgery to repair his fractured nose. On January 5, 2004, Keshick was sentenced to 33 months in prison followed by 3 years of supervised release. He also was ordered to pay \$9,796.94 in restitution to the victim. AUSA Leslie A. Hagen prosecuted the case for the United States.

UNITED STATES v. DANIEL MESHIGAUD (Hannahville Indian Community - Theft of Tribal Property) On November 24, 2003, Daniel Meshigaud, of Wilson, Michigan, pled guilty to a federal indictment charging him with theft of tribal property. Meshigaud admitted taking for his own benefit approximately \$4,150 from tribal funds belonging to the Hannahville Indian Community. The tribal funds were intended to be used for vocational rehabilitation of disadvantaged tribal members. Meshigaud was one of two counselors overseeing the Tribe's vocational rehabilitation program. The offense carries a maximum penalty of five years in prison, a fine of \$250,000, and other penalties. Sentencing is scheduled for March 23, 2004. AUSA Michael A. MacDonald prosecuted the case for the United States.

(Continued on page 7)

New Assistant Victim Witness Coordinator for Indian Country

There is a new employee within the Victim/Witness Services of the United States Attorney's Office who is assigned to Indian Country cases. Janet Strahan comes to us from the Capital Area Response Effort (CARE), a program in Lansing focusing on survivors of domestic violence and providing crisis intervention. Janet worked closely with law enforcement, community members, prosecutors, probation, survivors, medical personnel and criminal justice agencies to coordinate efforts to create a plan to combat domestic violence in that community. The program served more than 2,000 survivors per year. Janet has also provided training and education about the dynamics of domestic violence. Previously, she volunteered with the Clinton County Victim Support Team



Janet S. Strahan

providing 24-hour crisis intervention to victims of crime.

Janet is enthusiastic about working in Indian Country. "There is so much to learn about Indian Country and how I can be a resource to people in those communities," she said. "All those whom I have met so far have been extremely welcoming and I appreciate that."

In Janet's position of Victim-Witness Specialist, she will work with victims of crime from Indian Country to assist them with the Federal Court process, to locate helpful resources and to provide emotional support. She will also identify areas of need that can be addressed through training and/or collaborative effort within Indian Country.

Janet S. Strahan
Assistant Victim Witness Coordinator

Indian Country Case Update

(Continued from page 6)

UNITED STATES v. GARY PAUL PHILLIPS (Hannahville Indian Community - Aggravated Sexual Abuse by Force) On December 9, 2003, Gary Paul Phillips, of Wilson, Michigan, pled guilty to aggravated sexual abuse by force. At his plea hearing, Phillips admitted to sexually assaulting a woman on land held in trust for the use of the Hannahville Indian Community. The offense carries a maximum penalty of life in prison, a fine of \$250,000, and other penalties. Phillips is scheduled to be sentenced on March 24, 2004, in Marquette, Michigan. AUSA Leslie A. Hagen prosecuted the case for the United States.

UNITED STATES v. MARY EVA SMITH (Little River Band - Assaulting a Federal Officer; Disorderly Person). On December 18, 2003, a jury sitting in Grand Rapids, Michigan, convicted Mary Eva Smith, of Reed City, Michigan, of assaulting federal law enforcement officers and for being a disorderly person, both federal misdemeanor charges. The charges stemmed from a September 27, 2003, incident at the Little River Casino and Resort in Manistee, Michigan, during which Smith assaulted law enforcement officers of the Little River Band Tribal Police Department who were attempting to remove her from the premises. Little River Tribal Police officers are federal law enforcement officers, because they are commissioned Deputy Special Officers of the Bureau of Indian Affairs, which is part of the United States Department of the Interior. The jury found that Smith, a non-Indian, was disorderly by being intoxicated in a public place, and that she assaulted the law enforcement officers who were performing their official duties. The charges carry a maximum penalty of 1 year in prison. Smith is scheduled to be sentenced on March 22, 2004. AUSA Jeff J. Davis prosecuted the case on behalf of the United States.

UNITED STATES v. BRENDA LOU WELSH (Keweenaw Bay Indian Community - Theft of Federal Program Funds). On December 17, 2003, Brenda Lou Welsh, of Baraga, Michigan, pled guilty to theft of federal program funds. Welsh was the Executive Director of the Keweenaw Bay Ojibwa Housing Authority (KBOHA) from March 1972 until June 2001, and she used her position to embezzle approximately \$411,000. The stolen money consisted primarily of funds provided to the KBOHA by the United States Department of Housing and Urban Development for the operation of the KBOHA and its federally funded housing programs. Pursuant to her plea agreement, Welsh is required to make full restitution. She also agreed to fully disclose all of her assets and sources of income, and to fully cooperate in recovering the embezzled funds. In addition to restitution, the charge carries a maximum penalty of 10 years in prison, a \$250,000 fine, and other penalties. Welsh is scheduled to be sentenced on March 22, 2004, in Marquette, Michigan. AUSA Daniel Y. Mekaru prosecuted the case on behalf of the United States.

Brian P. Lennon
Deputy Criminal Chief
Supervisor of Indian Country Unit

United States Attorney's Office
P.O. Box 208
Grand Rapids, MI 49501

Bedohgeimo

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Margaret M. Chiara, United States Attorney

Jeff J. Davis, Assistant United States Attorney
Indian Country Liaison

Leslie A. Hagen, Assistant United States Attorney
Violent Crimes in Indian Country

Kaye D. Hooker, *Law Enforcement Coordinator*

Brian P. Lennon, Assistant United States Attorney
Deputy Criminal Chief, Supervisor of Indian Country

Janet S. Strahan, *Indian Country Victim Witness Coordinator*

Michelle Y. Woods, *Newsletter Designer and Coordinator*



Bedohgeimo

"Talking to Everyone"

A NEWSLETTER FROM THE UNITED STATES ATTORNEY'S OFFICE,
WESTERN DISTRICT OF MICHIGAN

From the Desk of the United States Attorney



United States Attorney
Margaret M. Chiara

Communication is critical when considering the rights of crime victims.

I was already working as an assistant county prosecutor before the 1985 Crime Victims Rights Act afforded fundamental due process equal to

what defendants long ago were guaranteed.

It was incomprehensible to me that victims who screamed in pain, cried in humiliation, or yelled in outrage had no voice as they sought justice for crimes

against their persons or property, or both.

During the past 20 years the legal status of victims in the State of Michigan has substantially improved. However, the implementation of statutory rights is dependent on those who listen to or speak for victims or, when a homicide, for their families.

Tribal and federal advocates should pay attention to victims' concerns. Victims have a need and a right to know about every phase of the legal process in which they have become involved, and almost always, through no fault of their own. Advocates have an absolute duty to convey, that is, to communicate, circumstances that might jeopardize the safety of the victim as she/he negotiates through the criminal justice system.

Federal prosecutors have an equivalent obligation to listen to named victims and/or their advocate and to ensure that the individual or groups of victims are kept informed about court proceedings directly or through their advocates. The lack of stringent federal statutory requirements does not excuse neglecting or deliberately disregarding victims' concerns.

Crime victims should be consulted whenever possible before plea negotiations. They should also be notified about outcomes, that is, detention or probation violation hearings, sentencing and appeals. Every effort should be expended to ensure full and timely restitution. We who work in the criminal justice system must be mindful and respectful of victims' rights.

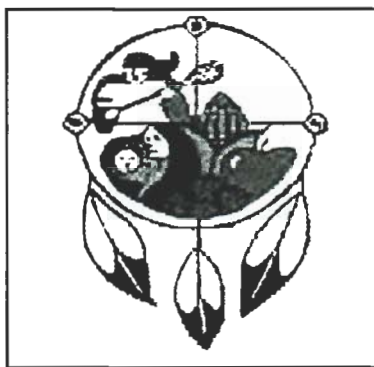
Victim Advocacy in Indian Country

The focus of this edition of *Bedohgeimo* is victim services in Indian Country. Those who have devoted their careers to Indian Country remember when there were no services to victims of crime in Indian Country. Now Tribes have their own victim advocates. The United States Attorneys' Offices (USAO) with responsibilities to protect public safety in Indian Country also have advocates dedicated to services for crime victims. The Federal Bureau of Investigation (FBI) has recently added victim advocates to their field offices.

While such an abundance of services is welcome, the obvious challenge is coordination. From my perspective, the tribal advocate should be the focal point of service coordination. It is essential that the tribal advocate be involved in all aspects of the case from the outset of the investigation

through the prosecutorial and judicial process to the conclusion of the case. Tribal advocates must maintain flexibility and be knowledgeable about the requirements of the federal criminal justice system.

The FBI advocate is responsible to identify victims of crime and to provide pre-indictment services. During the



investigative phase, the FBI advocate should inform victims of their right to receive services and should facilitate access to emergency medical and/or social services, counseling, treatment and other support options. Emergency resources are available through the Office of Victims of Crime.

The FBI is also required to notify the victim about the status of the investigation, the arrest of the offender and any court proceedings pre-indictment. In domestic violence and sexual assault cases, there may be a need for STD and HIV testing for victims. Two tests can be paid through public funds. See 42 U.S.C. § 1411(b). After charges have been filed, the defendant can be required to be tested for limited purposes. See 42 U.S.C. § 14011(b)(2).

(Continued on page 2)

Victim Advocacy in Indian Country

(Continued from page 1)

When criminal charges are filed, the USAO victim coordinator assumes responsibility for the provision of services and notification. The advocate schedules interviews with case agents and prosecutors, assists with trial preparation and provides support during the trial and other court proceedings. A variety of supportive services can be coordinated and provided through the efforts of the victim advocate. Should the victim need a personal protection or restraining order, the advocate will work with the state and tribal police to protect the victim's safety.

The tribal advocate is the *linchpin*, the consistent presence from the commencement to the conclusion of the case. Tribal

advocates are first responders; they usually live in the community that they serve. The tribal advocate knows the victim and his or her family, and if the perpetrator is a resident of the reservation, his or her family also. Tribal advocates are acutely aware of community dynamics, politics and reactions to specific situations.

In my opinion, the federal victim advocates are concerned, competent, and hard working professionals. However, the tribal advocate is in a unique position to know the specific needs of a particular victim and the situational details that should be considered when investigating and prosecuting a criminal case.

Coordination of services is certainly in the best interest of the victim. Ensuring that



Jeff J. Davis

the tribal advocate is informed and involved in all aspects of federal cases will help secure the safety of victims of crime in tribal communities.

Jeff J. Davis
Assistant United States Attorney
Indian Country Liaison

Victimization in Indian Country

A study of crime victimization in Indian Country paints a dismal picture. According to a report published by the Bureau of Justice Statistics,¹ the rate of violent victimization of American Indians is more than twice as high as the national average. What follows are a few statistics about victimization in Indian Country.

American Indians are more likely than people of other races to experience violence by someone of a different race.

Aggravated assault rate (as victims) among American Indians was more than three times the national average.

Half of the total violent crimes committed against American Indians occurred among those age 12 to 24 years.

Indian victims of intimate and family violence are more likely than others to be injured and need hospital care.

The average annual rate of rape and sexual assault among American Indians is 3.5 times higher than for all races.

Alcohol and drug use by the offender was a factor in more than half of violent crimes against American Indians.

The total annual loss for American Indians arising from violent criminal victimization translates into more than \$35 million; medical expenses accounted for more than \$21 million.

Twelve percent of the victims who reported their violent crime to the police received no victim services assistance from any source.

Each year about 150 American Indians become murder victims.

American Indian murder victims were more likely than white or black murder victims to have been killed by a stranger of a different race.

Estimates are that one of three American Indian women is raped in her lifetime. Additionally, seven Indian women per 1,000 are sexually assaulted, compared to three per 1,000 African American women, two per 1,000 Caucasian women, and one per 1,000 Asian American women.²

Perhaps you have seen these statistics and wondered what is being done to stop the high rates of crime in Indian Country. Each sovereign nation has been developing plans to address crime in their communities. For example, the Hannahville-Potawatomi Indian Community has programs and materials on topics such as *Domestic Violence Awareness*, *Sexual Assault Awareness*, and *Are You the Victim of Stalking?* Tribal law enforcement advocates, court and health services personnel, housing and human services have been collaborating to address crime victims needs.

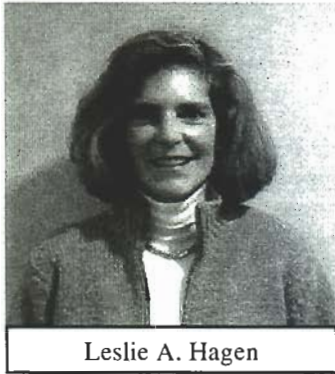
In the Western District of Michigan, the United States Attorney's Office currently has 59 criminal matters in Indian Country. Over 75% of these matters involve violent crimes. We have made progress in investigating and prosecuting violent crime in Indian Country. We have also improved services to crime victims. By talking and listening to one another and, more importantly, to the victims, we can provide a supportive network for victims of crime.

¹ 1999, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "American Indians and Crime"

² The National Congress of American Indians (NCAI)

Janet S. Strahan
Assistant Victim Witness Coordinator

Protecting Children in Court



Leslie A. Hagen

When children are victims of crime and a trial is scheduled, many parents ask the prosecutor if the child victim has to testify. The answer to the question is "yes." The prosecutor is not allowed to substitute police reports, medical reports or depositions for live or actual testimony. The reason for calling the victim to testify is the Sixth Amendment of the United States Constitution. Defendants have a constitutional right to confront their accusers. That said, there are provisions in the federal law (See 18 U.S.C. § 3509) that alleviate some of the trauma that can occur when children have to relive the crime by testifying in a criminal trial. Federal law also provides for confidentiality of the child victim's identity. What follows is a summary of some of the protections found in 18 U.S.C. § 3509.

Confidentiality of Information. The law provides that documents disclosing the name or any information concerning the child be stored in a secure place. Government employees connected with the criminal proceedings may disclose the documents only to persons who have a reason to know the information. See 18 U.S.C. § 3509(d) (3)

Protective Orders. If necessary, federal prosecutors can seek protective orders to safeguard the privacy of a child. See 18 U.S.C. § 3509(b)(2)(E)

Sanctions for Violating the Disclosure Rules. A knowing or intentional violation of the privacy protections accorded children by federal law is a criminal contempt punishable by not more than one year imprisonment, a fine, or both. See 18 U.S.C. § 403

Consultation with Multidisciplinary Teams. When feasible, federal prosecutors and victim witness personnel shall use multidisciplinary child abuse teams. See 18 U.S.C. § 3509(g)(1)

Speedy Trial. In a proceeding requiring a child, the court may designate the case to be of special public importance. If so designated, the court will ensure a speedy trial. The reason for a speedy trial is to minimize the length of time the child endures the stress of involvement with the criminal process. If a continuance is requested, the court shall take into consideration the age of the child and the potential adverse impact the continuance may have on the child's well-being. See 18 U.S.C. § 3509(j)

Adult Attendant. A child testifying at or attending a judicial proceeding has the right to be accompanied by an adult attendant to provide emotional support to the child. See 18 U.S.C. § 3509(i)

Testimonial Aids. The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying. See 18 U.S.C. § 3509(l)

Child Victims' Live Testimony via 2-Way Closed-Circuit Television. The prosecutor may use 2-way closed circuit television instead of live, in-court testimony in cases involving offenses against children, if approved by the court. Closed-circuit television may be used when the court finds there is a substantial likelihood that the child would suffer emotional trauma. See 18 U.S.C. § 3509(b)(1)

Victim Impact Statement. Children can prepare victim impact statements. Statement forms for children should be age appropriate, permitting the child to express his/her views concerning the consequences of the child's victimization at a level and in a form of communication commensurate with the child's age and ability. See 18 U.S.C. § 3509(f)

Sentencing. The right to speak at sentencing may be exercised by a parent or legal guardian of the victim who is present at the sentencing hearing, if the victim is below the age of 18 years or is incompetent. See Fed. R.Crim. P. 32(i)(4)(B)(i)

These laws are intended to guide Justice Department law enforcement officers, investigators, prosecutors, victim/witness professionals, and staff members who are required to appear in court. Adhering to these laws should reduce the trauma to children who testify in the criminal justice system.

For additional information see *Attorney General Guidelines for Victim and Witness Assistance 2000* published by the United States Department of Justice.

Leslie A. Hagen
Assistant United States Attorney
Violent Crime in Indian Country

Honoring Traditional Ways of Healing in the Criminal Justice System

Native American victims of crime may want to use traditional medicines and ceremonies as part of their healing process. A crime victim may wish to smudge or participate in a sweat lodge ceremony for purification purposes. The significance, sacredness, and correct use of traditional medicines is complex. The effectiveness of their healing qualities depends on specialized knowledge that is passed from generation to generation. The use of these sacred herbs can bring great comfort to the Indian victim of crime.

The use of traditional ways has been supported by the courts. In *United States v. Iron Cloud*, 312 F. 3d 379 (8th Cir. 2002), a defendant was ordered to pay \$3000 to the victim's father for a traditional giveaway ceremony to commemorate the deceased.

The victim's father testified at the sentencing hearing that he followed Native American religious customs. The family needed to make or buy items such as star quilts and beadwork to be used in a giveaway ceremony. There is precedent for Victims of Crime Act (VOCA) reimbursement for traditional ceremonies used after the commission of a crime. For example, the South Dakota Crime Victims Compensation Commission has allowed up to \$750.00 in payments to families for the use of spiritual leaders and medicine men.

The use of traditional ways should be accommodated in order to assist victims in healing and to increase victims' confidence in the federal criminal justice system.

Advocates in Indian Country

The victim advocates in Indian Country know the history of their communities; they work diligently to support victims of crime and to identify creative solutions through agency collaboration. Tribal advocates strive to make their reservations a safer place to live.



Joyce Siegal is the victim advocate at the **Bay Mills Indian Community**. Joyce provides services to victims of domestic violence and sexual assault.

Joyce learned about domestic violence from her own experience as a survivor. She gained an understanding of advocacy and how, if done correctly, it

can make a difference in an individual's life. Joyce believes that tribal advocacy is important because "people need someone in the community who they can talk to and feel comfortable with, and can assist in sorting out their options." A major accomplishment of victim advocacy in BMIC is to ensure that clients can comfortably give information about their experiences because it will be kept confidential.

Cindy Fricke is the victim advocate at the **Grand Traverse Band of Ottawa and Chippewa Indians Reservation**. Cindy is on-call to provide crisis intervention services for crime victims twenty-four hours a day, seven days a week. Cindy believes that tribal advocacy is important because "tribal members are often overlooked in receiving services." Prompt delivery of services that meet specific needs of a victim is imperative. GTB has worked to develop useful collaboration with law enforcement so that victims can obtain help quickly after a crime has been committed.



Ruth Oja is the victim advocate and grant manager for the **Hannahville-Potawatomi Indian Community**. Services provided include direct advocacy, information and referral, transportation, court advocacy, assistance with personal protection orders, and victim's compensation. According to Ruth, tribal

advocacy is important because there are so many cultural implications in providing services in Indian Country. Ruth points out that dealing with many overlapping jurisdictions complicates victimization in Indian Country. Helping people navigate through these systems is a high priority.

Julie Ramsey is the Family Violence Prevention Worker for **Little River Band of Ottawa Indians**. Julie assists tribal members to obtain practical services in four counties. She also is responsible for domestic violence prevention in nine counties. Julie believes tribal advocacy is important "because Indian women are getting battered more than other races and their injuries are more severe." "Women need to value themselves. The most significant accomplishment is developing a community response to domestic violence."



Wanda Seppanen is the VOCA Coordinator at the **Keweenaw Bay Indian Community** in Baraga. She provides a variety of services to crime victims.

Wanda believes that tribal advocacy is valuable because victims need "someone to talk to who understands their situation, especially in the rural environment where

they live." KBIC has focused on collaboration and teamwork among law enforcement, social services and the court. Wanda commented, "When a person is victimized by a crime, people really come to bat for them."

Barb Larson is the Victim Advocate at **Lac Vieux Desert Band of Lake Superior Chippewa Indians**. Barb provides services to victims of domestic violence, sexual assault and stalking. She believes that tribal advocacy is important because "the tribal community is its own community - like a big family." When victims have to go outside of the community their families can be disgraced. Barb commented, "it's a matter of building trust so that women will talk to you." The biggest accomplishment has been the collaboration with the tribal court to improve the treatment of victims of crime.

Lori Jump is the Program Manager and **Anna Rogers-Stott, Jennifer McKerchie, Pat Allard and Jackie Frechette** are Victim Advocates with the **Sault Saint Marie Tribe of Chippewa Indians**. They provide comprehensive services to victims of crime. In April 2003, the Advocacy Resource Center opened the Women's Lodge of Bravery, which is a residential shelter for abused women and children. Services are available to victims of domestic violence, sexual assault, and stalking.

Mandy Wigren and Heather Bartlett are the Victim Advocates of the **Saginaw Chippewa Indian Tribe**. Both advocates believe tribal advocacy is extremely important because members want services offered within the tribal community. Mandy and Heather work diligently to determine the needs of the community, to establish a trust relationship and to provide culturally relevant service options.

The **Little Traverse Bay Band of Odawa Indians** does not have a victim advocate. They have applied for a grant to fund victim services.

The **Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Nottawaseppi Huron Band of Potawatomi and the Pokagon Band of Potawatomi Indians** do not yet have fully developed tribal law enforcement services.

(Continued on page 5)

Advocates in Indian Country

(Continued from page 4)



David Paul is the **FBI Victim Specialist** in the Upper Peninsula. For seventeen years he worked for the State of Michigan's Family Independence Agency as a Services Specialist working with children and adults.

He also served as a Recipient Rights Advisory Committee member for fifteen years for a central upper Michigan community mental health agency. He is assigned to the FBI's Marquette Resident Agency, which covers five Native American communities and fifteen counties in Michigan's Upper Peninsula.

"I am looking forward to continuing to serve the Upper Peninsula of Michigan in my new role of Victim Specialist. When a person is victimized it can be a time of crises and the need for support is greatest. I am looking forward to the challenges ahead and the opportunity to promote healing during difficult times."



Carol Marshall has worked with victims for many years in different capacities. Currently, she is the **FBI Victim Specialist** in the Lower Peninsula.

Before coming to Michigan to work for the FBI as Victim Specialist, Carol worked for Missouri Department of Corrections as a Restorative Justice Specialist.

Carol has also worked as a Director of a Domestic Violence Shelter, instituted a Crime Victim advocacy program in a County Juvenile Office, held the position of Victim Advocate in a State's Attorney's Office, and worked as Coordinator of Missouri Mentoring Partnership.

Janet S. Strahan
Assistant Victim Witness Coordinator

Case Update

United States v. Michigan, No. 2:73-CV-26 (Judge Richard Alan Enslen).

The United States filed its original complaint in *United States v. Michigan* in 1973, on behalf of the Bay Mills Indian Community. The complaint, as amended in 1976, asserted a continuing treaty-protected right to fish in waters of the Great Lakes adjacent to the lands ceded by the Treaty of March 28, 1836, with the Ottawa and Chippewa Nations of Indians. Ultimately, Bay Mills and four other tribes intervened in the litigation as Plaintiff-Intervenors: Sault Ste. Marie Tribe of Chippewa Indians, Little Traverse Bay Band of Odawa Indians, Little River Band of Ottawa Indians, and Grand Traverse Band of Ottawa and Chippewa Indians.

In 1979, the United States District Court found that the Tribes reserved their aboriginal right to fish in the ceded waters of the Great Lakes because they did not relinquish the right in the 1836 Treaty, and no subsequent treaty or other congressional action terminated the rights. Following the Court's decision, the parties negotiated a fifteen year consent decree to govern the terms and conditions upon which the right would be exercised, which was entered in 1985 and renegotiated in 2000 for a twenty year period.

In November 2003, the State of Michigan filed an amended counterclaim, which expressly raised issues undecided in the initial phase of the litigation, that is, the Tribes' rights to hunt and fish on inland lands and waters. Michigan's amended counterclaim seeks a declaratory judgment that the Tribes do not retain any such rights except on federal lands that have never passed out of federal control, and on which the exercise of those rights is not inconsistent with the purpose of federal ownership.

The Tribes have filed a joint response to the amended counterclaim denying that the Treaty right was limited in the manner described by the State. In April 2004, the United States filed a supplemental complaint that similarly denied the allegations in the State's amended counterclaim. A case management order has been entered in the case, which sets deadlines of January 21, 2005, for the submission of all expert reports, April 30, 2005, for the close of all discovery, June 30, 2005, for dispositive motions, and a trial date in January 2006. Additional case updates will follow. AUSA Jennifer L. McManus.

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2004 Tribal Tour



The government-to-government meetings are generally referred to as the tribal tour. The purpose of this annual event is to ensure that the leaders of the Sovereign Nations and the United States Attorney have an opportunity to communicate about matters of mutual interest and concern.

Law enforcement, social service providers and victim advocates meet to promote plans and exchange ideas intended to enhance the quality of their respective contributions to Indian Country.



United States v. Lara

Why this Supreme Court Decision is Important for Tribal Nations, United States Attorneys, and Victims of Crime in Indian Country

Background

Traditionally, tribal governments are considered to be separate and distinct sovereigns from both the states and the Federal government. For many years, this separate distinction has meant that a criminal act committed by a Native person may be prosecuted in both Tribal court and Federal court without violating the prohibition against double jeopardy. This doctrine was upheld in the Supreme Court decision *U.S. v. Wheeler*, decided in 1978. Though the Supreme Court raised questions about the authority of tribal governments over non-member Indians in 1990, subsequent federal legislation clarified the inherent right of tribal governments to prosecute non-member Indians.

The Facts of Lara

On June 13, 2001, Billy Joe Lara, an enrolled member of the Turtle Mountain Band of Chippewa, was arrested for public intoxication by Bureau of Indian Affairs (BIA) police officers on the Spirit Lake Nation Reservation in North Dakota. In the aftermath of the arrest, Lara physically assaulted a BIA Police Officer. As a result of Lara's behavior, the Spirit Lake Tribe charged him with five violations of Spirit Lake Code, including Violence to a Policeman. Lara pled guilty to three of the five charges in Spirit Lake Tribal Court on June 15, 2001, and was sentenced to 155 days in tribal jail.

On August 29, 2001, Billy Joe Lara was indicted by a Federal Grand Jury in the United States District Court for the District of North Dakota for violation of 18 U.S.C. 111(a)(1), Assault on a Federal Officer. His attorney filed a motion to dismiss, arguing that the Federal prosecution violated double jeopardy provisions. Lara's attorney argued that, because the Spirit Lake Tribe had already prosecuted Lara, the Federal prosecution constituted double jeopardy. Lara's motion to dismiss was denied by the district court, largely based on the

Wheeler Supreme Court decision. The double jeopardy question was then appealed to the Eighth Circuit Court of Appeals.

The Eighth Circuit found in favor of Billy Joe Lara and ruled that the Federal prosecution of Billy Joe Lara violated the Constitutional doctrine of double jeopardy. In so doing, the Court ruled that tribal governments do not have inherent criminal jurisdiction over Indians from other tribes. The Eighth Circuit decision found that the Spirit Lake Nation had jurisdiction over Billy Joe Lara (a

Chippewa Indian from another reservation) only because Congress granted permission

to tribal governments via legislation in response to another Supreme Court decision, *Duro v. Reina*. In other words, notwithstanding the fact that the Dakota people existed as a self-governing entity long before the United States was established, the Eighth Circuit ruled that tribal governments are allowed to prosecute crimes committed by non-member Indians only because Congress authorizes them to do so.

The United States government appealed the *Lara* case to the United States Supreme Court, and a decision was handed down on April 19, 2004. The Supreme Court overturned the Eighth Circuit and ruled that federal prosecutors can proceed with their case against Lara.

Impact on Tribal Governments & Victims

The *Lara* decision has implications far beyond the facts of this case. If the Supreme Court had upheld the Eighth Circuit ruling, all tribal prosecutors in the nation would have faced a dilemma regarding prosecution in certain cases. Fortunately, the Supreme Court has

affirmed the ability of tribal governments to proceed with a prosecution without fear that a later federal prosecution will be prohibited by the double jeopardy rule. Because of certain punishment limits in tribal courts, federal prosecution can be very important in some cases. When serious crimes occur, such as child abuse, rape, kidnapping, and murder, it is understandable that tribal governments and victims desire to have an option for lengthy imprisonment, which is only possible if the Federal government prosecutes.

"The Supreme Court has affirmed the ability of tribal governments to proceed with a prosecution without fear that a later federal prosecution will be prohibited by the double jeopardy rule."

With the Supreme Court decision in *Lara*, tribal governments continue to have autonomy and independence in decisions to prosecute at the tribal level, but it is still important that federal and tribal counterparts communicate and collaborate when it comes to addressing crime in Indian country. As tribal leaders have said for years, community accountability is critical in preventing future cases of domestic violence and child abuse. Coordination and communication are key to providing victims of violent crime with a sense of healing and justice.

Sarah Deer
Staff Attorney
Tribal Law and Policy Institute

¹ The Double Jeopardy Clause of the Fifth Amendment states the following: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. Amend. V.

² 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978).

³ Public Law 102-137, 1991 (codified at 25 U.S.C. 1031(2), (4)).

Indian Country Case Updates

United States v. Kimberly Sue Davis (Sault Ste. Marie Tribe of Chippewa Indians - Assault on a Person Less than Sixteen Years of Age). On April 19, 2004, Kimberly Sue Davis, 30, of Newberry, Michigan, pled guilty to assaulting a person less than sixteen years of age, in violation of federal law. The crime occurred October 23, 2003, on land held in trust for the use of the Sault Ste. Marie Tribe of Chippewa Indians, while Davis was babysitting three young brothers. The victim of the assault is a two-year-old boy and member of the Sault Ste. Marie Tribe of Chippewa Indians. Davis is a non-Indian. Davis was sentenced to a term of five days incarceration and one year of supervised release upon her discharge from jail. Conditions for her term of supervised release include the following: no employment as a babysitter or daycare provider; no unsupervised contact with minor children other than her own children and mental health counseling. AUSA Leslie A. Hagen.

United States v. Tanya Jean Fugett (Bay Mills Indian Community - Theft from a Tribal Gaming Establishment). On May 25, 2004, Tanya Jean Fugett, 25, of Sault Ste. Marie, Michigan, was sentenced by the United States District Court to two years probation, two hundred hours of community service, and a special assessment of \$100. In addition, Fugett was ordered to pay \$2,600 in restitution to the Bay Mills Resort and Casino. On December 23, 2003, Fugett pled guilty to Count 1 of an indictment charging her with theft from a gaming establishment on Indian land. The indictment alleged that Fugett knowingly wrote insufficient fund checks to the tribe's casino. AUSA Paul D. Lochner.

United States v. Angelech Louise Hall (Hannahville Indian Community - Theft from a Tribal Organization). On March 23, 2004, Angelech Louise Hall, 27, of Bark River, Michigan, was sentenced to one month in jail followed by three years of supervised release, and a \$100 special assessment. The sentence also included an order to pay \$8,000 in restitution to the Hannahville Indian Community. On November 24, 2003, Hall pled guilty to a criminal information charging her with theft from an Indian tribal organization. Hall, a non-Indian, was employed as an assistant manager at the Island Oasis Convenience Store, which is owned and operated by the Hannahville Indian Community. In October, 2002, Hall created fraudulent bottle deposit returns, taking the cash and converting the money to her own use. AUSA Paul D. Lochner.

United States v. Albert J. Kappell (Keweenaw Bay Indian Community - Child Sexual Assault). On March 1, 2004, Albert J. Kappell, 41, of Appleton, Wisconsin, was sentenced to life in prison for his October 10, 2003, conviction in Marquette, Michigan, for nine counts of sexual abuse of two young girls. The victims, who were three and six years of age when Kappell assaulted them, are members of the Keweenaw Bay Indian Community. Kappell, a non-Indian and previously convicted child molester, repeatedly abused the young girls, including acts of penile and digital penetration, during a six-month period in 2001 and 2002 when he lived with the girls' mother. Several of the acts of sexual abuse were committed on Christmas Day 2001. AUSAs Leslie A. Hagen and Michael A. MacDonald.

United States v. Melissa A. Matthews (Sault Ste. Marie Tribe of Chippewa Indians - Sexual Abuse of a Minor). On April 20, 2004, a federal grand jury in Marquette returned an indictment charging Melissa Matthews, 19, an Indian, with three counts of sexual abuse of two 14-year old girls between January and March 2004. If convicted, Matthews faces up to fifteen years in prison followed by three years of supervised release, a \$250,000 fine and a \$100 special assessment. The charges in an indictment are merely accusations, and the defendant is presumed innocent until and unless proven guilty in a court of law. AUSA Leslie A. Hagen.

United States v. Daniel Meshigaud (Hannahville Indian Community - Theft of Tribal Property). On March 26, 2004, Daniel Meshigaud, 42, of Wilson, Michigan, was sentenced to one month in jail followed by three years of supervised release and a \$100 special assessment. The sentence also included an order to pay \$3,793.50 in restitution to the Hannahville Indian Community. On November 24, 2003, Meshigaud pled guilty to a federal indictment charging him with theft of tribal property. Meshigaud admitted taking for his own benefit approximately \$4,150 from tribal funds belonging to the Hannahville Indian Community. The tribal funds were intended to be used for vocational rehabilitation of disadvantaged tribal members. Meshigaud was one of two counselors overseeing the tribe's vocational rehabilitation program. AUSA Michael MacDonald.

United States v. Gary Paul Phillips (Hannahville Indian Community - Aggravated Sexual Abuse by Force). On March 24, 2004, Gary Paul Phillips, 46, of Wilson, Michigan, was sentenced to 136 months in prison, followed by five years of supervised release. The sentence also included an order to pay \$7,800 in restitution and a \$100 special assessment. On December 9, 2003, Phillips pled guilty to aggravated sexual abuse by force. Phillips sexually assaulted an Indian woman on land held in trust for the use of the Hannahville Indian Community. AUSA Leslie A. Hagen.

United States v. Gary Paul Phillips-Donovan (Hannahville Indian Community - Sexual Abuse of a Minor). On April 20, 2004, a federal grand jury in Marquette returned a single-count indictment charging Gary Paul Phillips-Donovan, 19, of knowingly engaging in a sexual act with a minor at least four years his junior, in violation of federal law. If convicted, Phillips-Donovan faces up to fifteen years in prison followed by three years of supervised release, a \$250,000 fine and a \$100 special assessment. The charges in an indictment are merely accusations, and the defendant is presumed innocent until and unless proven guilty in a court of law. AUSA Leslie A. Hagen.

(Continued on page 9)

Indian Country Case Updates

(Continued from page 8)

United States v. Oscar Ramirez, Jr. (Grand Traverse Band - Domestic Violence). On April 26, 2004, Oscar Ramirez, Jr., 28, of Benzie County, Michigan, pled guilty to domestic violence - second offense, a State of Michigan misdemeanor charged federally through the Assimilative Crimes Act. This offense carries a maximum penalty of one-year imprisonment, a fine of not more than \$100,000, a mandatory special assessment of \$25, and a period of supervised release not to exceed one year. At his plea hearing, Mr. Ramirez acknowledged that, on February 16, 2004, he kicked, punched in the head, and bit the victim, a woman with whom Ramirez has children in common. The victim is a member of the Grand Traverse Band of Ottawa and Chippewa Indians. Ramirez is non-Indian. Ramirez also conceded that he had previously been convicted (in December 2002) of domestic violence in the 85th District Court. Sentencing is scheduled for July 26, 2004. AUSA Leslie A. Hagen.

United States v. Jon Duane Ramsey (Hannahville Indian Community - Assault by Wounding). On April 19, 2004, Jon Duane Ramsey, 30, of Calumet, Michigan, pled guilty to one count of assault by wounding. This domestic violence assault occurred September 27, 2003, on land held in trust for the use of the Hannahville Indian Community. The assault occurred when Ramsey was at the victim's home and an argument ensued. Ramsey punched the victim in the mouth. The victim is a member of the Hannahville Indian Community. Ramsey is a non-Indian. The defendant was sentenced to a term of two years probation with the following conditions: no alcohol or controlled substances; random drug and alcohol testing; successful completion of a Batterer's Intervention Program; no violation of any federal, state, or tribal laws; no threatening or assaultive behavior; and no purchasing or possessing of a firearm or ammunition. AUSA Leslie A. Hagen.

United States v. Mary Eva Smith (Little River Band - Assaulting a Federal Officer; Disorderly Person). On April 12, 2004, Mary Eva Smith, 31, of Reed City, Michigan, was sentenced to one year of supervised release for assaulting federal law enforcement officers and for being a disorderly person, both federal misdemeanor charges. The charges stemmed from a September 27, 2003, incident at the Little River Casino and Resort in Manistee, Michigan, during which Smith assaulted members of the Little River Band Tribal Police Department who were attempting to remove her from the premises. Little River Tribal Police officers are federal law enforcement officers, as they are commissioned Deputy Special Officers of the Bureau of Indian Affairs. AUSA Jeff Davis.

United States v. Brenda Lou Welsh (Keweenaw Bay Indian Community - Theft of Federal Program Funds). On March 24, 2004, Brenda Lou Welsh, 58, of Baraga, Michigan, was sentenced to 36 months followed by three years of supervised release. Welsh also was ordered to pay \$420,780.93 in restitution and a \$100 special assessment. On December 17, 2003, Welsh pled guilty to theft of federal program funds. Welsh was the Executive Director of the Keweenaw Bay Ojibwa Housing Authority (KBOHA) from March 1972 until June 2001. She used her position to embezzle approximately \$411,000. The stolen money consisted primarily of funds provided to the KBOHA by HUD for the operation of the KBOHA and its federally funded housing programs. AUSA Daniel Y. Mekaru.

Brian P. Lennon
Deputy Criminal Chief
Supervisor of Indian Country Unit

Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the United States Attorney for the Western District of Michigan, No. 02-1679, ___ F.3d ___, 2004 WL 1144510 (6th Cir. May 24, 2004).

In June 1996, on the day GTB commenced casino operations at its Turtle Creek site, the Tribe brought a declaratory judgment action against the United States seeking a declaration that its gaming operations were legal. The United States counterclaimed and sought a preliminary injunction, arguing that the operations were illegal. The principal issue in the litigation was whether the Turtle Creek site was exempt from a general prohibition against gaming on lands taken into trust after October 17, 1988, because an exception to the prohibition applied: the exception for "lands taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. 2719(b)(1)(B)(iii). The State intervened as a defendant, arguing that the exception did not apply. The district court denied the U.S. motion for preliminary injunction and sought an opinion from the National Indian Gaming Commission ("NIGC") as to whether in fact the Turtle Creek land was taken into trust as part of the "restoration of lands" exception. The NIGC found that the exception applied (the United States had maintained a government-to-government relationship with GTB from 1795 until 1872, when that relationship was improperly severed by the Secretary of Interior). When the NIGC rendered this opinion, the United States withdrew from the litigation, but the State remained active as a defendant-intervenor. The district court (Judge Hillman) took the NIGC opinion into account and also concluded that the exception applied based on its own independent analysis. In a May 24, 2004 opinion, the Sixth Circuit affirmed based on Judge Hillman's "well-reasoned decision."

Jim Santelle
Civil Chief

United States Attorney's Office
P.O. Box 208
Grand Rapids, MI 49501

Bedohgeimo

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Margaret M. Chiara, United States Attorney

Jeff J. Davis, Assistant United States Attorney
Indian Country Liaison

Leslie A. Hagen, Assistant United States Attorney
Violent Crimes in Indian Country

Kaye D. Hooker, *Law Enforcement Coordinator*

Brian P. Lennon, Assistant United States Attorney
Deputy Criminal Chief, Supervisor of Indian Country

Janet S. Strahan, *Indian Country Victim Witness Coordinator*

Michelle Y. Woods, *Newsletter Designer and Coordinator*

Bedohgeimo

“Talking to Everyone”

A NEWSLETTER FROM THE UNITED STATES ATTORNEY'S OFFICE,
WESTERN DISTRICT OF MICHIGAN

From the Desk of the United States Attorney

The National Museum of the American Indian (NMAI) has been described as “A Native place that celebrates indigenous cultures and voices from across the Americas.” The eighteenth Smithsonian Institution museum made its debut on September 2, 2004. My first of what I expect will be many visits to NMAI was in November.

According to information provided by the NMAI, the museum's design, inside and out, is the result of continuous conversation with Native people since the Congressional authorization of NMAI in 1989. From the perspective of one white woman, the fifteen years of development was well worth the wait. The outdoor environment, the architecture and the exhibits are engaging and truly exciting.

There are three permanent exhibitions: OUR UNIVERSE (philosophy), OUR PEOPLES (history) and OUR LIVES (contemporary). Two Tribes with whom I have become acquainted through my work with the Attorney General's Native American Issues Subcommittee are featured in this section: The LAKOTA Nation of the Pine Ridge Reservation,



South Dakota, in the philosophy exhibit and the TOHONA O'ODHAM Nation of Arizona in the historical exhibit. What was of particular interest to me was the Canadian ANISHINAABE philosophical component, which focused on “the spiritual relationship between humankind and the natural world.” The exhibit offered additional insight into the world view of the Tribal Nations with whom I have the privilege of working in northern and western Michigan.

There are comprehensive collections and changing exhibits in other areas of NMAI and also performance and ceremonial areas, in addition to an extensive resource center. For those who

have an interest in contemporary art, the extraordinary exhibit of “The Art of George Morrison and Allan Hauser” is on view until the fall of 2005. The artists' skill and sensibilities enable the viewer to become immersed in the experience of the Native North Americans.

Everyone, particularly those of us who work in Indian Country, should spend time in the National Museum of the American

Indian. I urge visitors to read the National Geographic publication *Spirit of a Native Place*, edited by Duane Blue Spruce, which recounts the process of building the museum. According to one of the architects “It is difficult to explain precisely what makes this a Native place, the elements are so intertwined throughout the whole building when you step onto the site, it is going to feel different from other places in Washington.”

Margaret M. Chiara

“We Are Someone’s Seventh Generation”

Boozhoo, Anniin.

The Chairman of the Little Traverse Bay Band of Ottawa Indians, Frank Ettawageshik, made this statement at the Third Annual Gathering of Eagle Staffs in October 2004. Chairman Ettawageshik was discussing the urgent need to protect the Great Lakes for future generations. As the Chairman explained, Anishnabe traditions teach that, when we are contemplating actions that will have a great impact on our communities, Native Americans are taught to think beyond this generation. Our actions today will affect future generations, up to and including that “Seventh Generation” yet to come. We are also taught that each of us is someone’s “Seventh Generation.” We are able to enjoy Mother Earth, our tribal traditions and communities today because our ancestors acted with the knowledge and understanding that their actions would eventually affect us.

As Chairman Ettawageshik spoke, I reflected on the applicability of this teaching to violent crime and the

prevalent problem of drugs and alcohol in Indian Country. Violent crime and alcohol/drug abuse in our tribal communities is increasing. In the Western District of Michigan, there have been two violent murders on our Reservations within the last three years.

According to respected elders, tribal communities are plagued with violence because we have not been faithful to our traditions. The practice of traditions is not a religion; it is a way of life. Tribal leaders should commit to restoring traditional communal values of respect and honor for all persons and things. The Seven Grandfather teachings should be the foundation of our tribal communities.

The White Bison Wellbreity Movement created by Ron Cohyis of the Mohican Nation is illustrative. After being gifted with a vision that inspired Ron Cohyis to create a hoop made from one hundred eagle feathers, he set out on a healing journey through Indian Country in 1995. This sacred hoop has brought hope and health to tribal communities

throughout the United States.

Today, Wellbreity has evolved into a national effort to reduce the destructive influence of drugs and alcohol by increasing traditional practices.

Violent crime, particularly sexual assault and domestic violence coupled with drug and alcohol abuse, should not be tolerated by tribal leaders, elders and concerned community members. Anishnabe traditions are the counterpoint to acts of violence. Anishnabek must act now to ensure a healthy and safe environment for the “Seventh Generation.”

Jeff J. Davis
Assistant United States Attorney
Indian Country Liaison



Jeff J. Davis

New Federal Crime Victim’s Rights *Justice for All Act 2004*



Janet S. Strahan

The *Justice for All Act* became law when signed by President Bush on October 30, 2004. The law increases the rights of victims in federal criminal proceedings and provides for the enforcement of those rights. It also authorizes funding to implement the law by supporting free legal clinics

for victims. The funds have not been appropriated to date.

For more than eight years, victim advocates have been working to increase victims’ rights in the federal criminal justice system. A United States Constitutional Amendment was the original goal. When it became obvious that the required number of votes could not be secured, the amendment was reconfigured into statutory language. The *Justice for All Act* passed the House and Senate with overwhelming support. The full title for the Act is the “Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn Crime Victims’ Rights Act.” You may enter one of these names into an internet search engine for the victim’s story. Members of the named victims’ families worked tirelessly to ensure that crime victims will be treated fairly and with dignity as they progress through the federal judicial system.

Crime Victims’ Rights

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime, or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the government in the case.
- The right to full and timely restitution, as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victims’ dignity and privacy.

(Continued on page 6)

National News



Leslie A. Hagen

National Protocol for Sexual Assault Examinations Released

The Violence Against Women Act 2000, required the Department of Justice to develop a

national protocol for sexual assault examinations, which was recently completed and released for distribution. It was designed as a guide for criminal justice and health care practitioners who respond to victims of sexual assault. The protocol was developed with the input of national, local, and tribal experts throughout the country, including law enforcement representatives, prosecutors, advocates, medical personnel, forensic scientists, and others. Assistant United States Attorney Leslie A. Hagen was a member of the criminal justice working group.

The goal of the protocol is to encourage the development of timely and competent medical forensic examinations. Such an examination can potentially validate and address sexual assault patients' concerns, minimize trauma they may experience, and promote their healing. Moreover, a timely and competent forensic examination will increase the likelihood that evidence collected will advance a criminal case investigation, resulting in perpetrators being held accountable and additional sexual violence prevented.

The primary issues in the protocol are the following: a coordinated approach, victim-centered care, informed consent, confidentiality, reporting to law enforcement, and payment for the examination under the Violence Against Women Act. It is anticipated that the combination of cutting-edge response techniques and collaboration among service providers will greatly enhance treatment and support for victims and increase law enforcement's ability to identify and immobilize sex offenders.

A copy of a *National Protocol for Sexual Assault Medical Forensic Examinations* may be obtained on-line at www.ojp.usdoj.gov/vawo/.

DOJ Awards DNA Grants

On September 23, 2004, Assistant Attorney General for the Office of Justice Programs Deborah J. Daniels announced that the Justice Department had awarded \$3.5 million in DNA grants to the State of Michigan to solve crime and to exonerate the innocent as part of President Bush's DNA initiative, *Advancing Justice Through DNA Technology*. Michigan received the first grants awarded through the President's initiative, which is a five-year \$1 billion effort to reduce casework and the convicted offender backlog; to improve crime lab capacity; to provide DNA training; and to conduct post-conviction DNA testing to identify missing persons. An additional \$230,328 was awarded in Michigan to improve forensic services.

According to Ms. Daniels: "DNA promises to be the most remarkable crime-fighting tool of the 21st century. These resources will help Michigan reduce its backlog of unanalyzed DNA samples, which will help solve more crime and breathe life into old cases. The Justice Department is committed to helping Michigan enhance its forensic programs to convict the guilty and exonerate the innocent." Ms. Daniels cited a Michigan example to illustrate the power of DNA. In 1991, a Detroit man raped and killed a Northwest Airlines flight attendant in a hotel room. The case was unsolved until 2001, when police say they were able to match the man's DNA with samples taken from the victim's body.

New DNA analysis techniques can yield results from biological evidence invisible to the naked eye. Police departments throughout the country are reexamining unsolved rape and homicide cases using advanced methods of detecting identifiable DNA. Newly processed DNA profiles are uploaded into the FBI database, CODIS, so the data can be compared with evidence in the national system. Matches are reported to law enforcement and then verified by obtaining and analyzing a second sample from the suspect. More information about DNA technology is available at www.dna.gov.

VAWA Is Ten Years Old

On September 13 and 14, 2004, hundreds of leaders in the violence against women movement gathered in Washington, D.C., to celebrate the tenth anniversary of the landmark Violence Against Women Act. This legislation has provided millions of dollars to Michigan to combat domestic violence, sexual assault and stalking since 1994. The act also gave police and prosecutors new tools for charging domestic violence offenders who cross jurisdictional boundaries to commit their crimes. (18 U.S.C. §§ 2261, 2261A and 2262).

According to the Office on Violence Against Women, "Data reported by OJP's Bureau of Justice Statistics show that almost 700,000 incidents of domestic violence are documented each year. FBI data further show that in the last 25 years almost 57,000 individuals have been killed in domestic violence situations."

Attorney General John Ashcroft addressed the audience and said "Since the passage of the Violence Against Women Act, the Justice Department and our partners at the Department of Health and Human Services have made it possible for countless other women to renew their hope, reclaim their dignity, and change their lives. Our Violence Against Women Office alone has made more than \$1 billion available to help communities increase support services for domestic violence victims and their children."

The tenth anniversary symposium speakers addressed various aspects of the causes, effects, societal perception and the prevention of domestic abuse, sexual assault and stalking. An entire track of the conference was dedicated to specific issues arising in Indian Country. Speakers included United States Attorney Margaret M. Chiara and Assistant United States Attorney Leslie A. Hagen.

Leslie A. Hagen
Assistant United States Attorney
Violent Crime in Indian Country

Guest Columnist

Full Faith and Credit Protection Orders

Both tribal and state governments use protection orders as one method of combating domestic violence. And, while protection orders have proven quite effective and useful, they are only as effective as the enforcement mechanisms in place. Prior to 1994, enforcement was often a problem because protection orders were usually good only within the jurisdiction that issued the order. Most governments did not enforce a protection order issued by another court system.

This limitation created a number of problems because a person may live in one jurisdiction, work in another, take a vacation, change jobs, or move to flee her attacker. To ensure that she always had an enforceable protection order, a person would have to apply for a second (or sometimes a third or fourth) protection order, pay any required filing fee, and show up in court. These additional proceedings would also, for due process reasons, mean that the respondent was given notice of the petitioner's location and attempt to obtain an additional protection order. For the woman who fled her attacker, such notification could prove deadly.

All these hassles presuppose that the petitioner would be able to obtain an additional protection order. The new jurisdiction, however, may not possess the authority to issue a protection order for a number of reasons, ranging from lack of jurisdiction over the respondent to lack of jurisdiction over the case. Each government's protection order laws contain some variations regarding who is eligible for an order and what types of relationships are covered.

In 1994, Congress addressed these concerns with the full faith and credit requirements of the Violence Against

Women Act (VAWA). The key section of VAWA declares that "any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe." 18 U.S.C. §2265.

VAWA's protection order provisions do two primary things. First, they divide state and tribal governments into "issuing jurisdictions" and "enforcing jurisdictions." Second, the statute mandates that once an issuing jurisdiction issues a protection order that complies with VAWA's three prerequisites, the enforcing jurisdiction must enforce it.

Both the issuing jurisdiction and the enforcing jurisdiction have rights and duties. The issuing jurisdiction gets to determine who qualifies for a protection order and the terms of the order. In addition, if the protection order is to qualify for full faith and credit, the issuing jurisdiction must satisfy VAWA's three requirements:

- 1) it must have possessed jurisdiction over the case and the respondent;
- 2) it must have provided due process to the respondent; and
- 3) if the order is a "mutual protection order," it must comply with VAWA.

VAWA puts strict limitations on mutual protection orders. Some jurisdictions issue mutual protection orders, orders that direct both parties to stay away from each other, almost as a matter of course. VAWA's full faith and credit requirements do not include these

orders, at least not the protection order automatically issued to the respondent. The petitioner's order still qualifies for full faith and credit. More specifically, the mutual protection order issued to respondent (against the petitioner) does not qualify under VAWA unless it was issued as a result of cross or counter petitions and the issuing court made specific findings that each party was entitled to the order.

Once a qualifying order is issued, all states and all tribes are obligated to enforce that order. The enforcing jurisdiction gets to determine the procedures for enforcement and the penalties for violating a protection order, but an enforcing jurisdiction must treat a protection order issued by another court the same as it would a protection order issued by one of its own courts. That is, a government can have only one set of procedures and penalties for violating a protection order – it cannot have one set for its own orders and one set for everyone else's orders. And it cannot refuse to enforce a protection order unless that order fails to satisfy VAWA's three requirements. Failure to enforce the order is a violation of federal law.

Congress drafted the VAWA's definitions and prerequisites to cast a broad net and reach as many protection orders as possible. Congress' goal was to create a mechanism to maximize enforcement of protection orders, thereby maximizing the effectiveness of those orders. While VAWA's full faith and credit requirements are not a perfect mechanism, they are a very large step in the right direction.

*Professor Melissa L. Tatum
University of Tulsa College of Law*



Guest Columnist

So How Many Rape Reports Are False?

After literally decades of feminist lobbying and demands for better treatment of rape victims, many police agencies across America are still stuck in a 1950s-era view of sexual assault.

Despite the official promises that victims would be treated with sensitivity, police frequently don't understand how to achieve that goal. And, although thousands of dedicated law enforcement officers want to do the right thing, there often is little support for sex crimes investigators. Rape complaints often are not properly investigated when police departments don't allocate the necessary resources to do the work or train their investigators.

In my 25 years of work as a police officer, sergeant, and now as an independent consultant, I've seen dramatic improvements in some law enforcement agencies. But others have shown little progress. I've seen problems in tiny sheriff's offices, in big city departments, and in the FBI.

The number of officers who come up to me at lunch, after class or during a break to tell me they rarely respond to a valid complaint of sexual assault is surprising to me. Recently, a 22-year female veteran of a state police agency told me she had never investigated a valid complaint in her entire career. Two detectives recently approached me and said they had not received a single valid sexual assault complaint in the five months they had been assigned to the Unit. When I asked these detectives about the details of the cases they had been assigned, they generally cited a number of reasons for believing the allegation to be false, such as alcohol and/or drugs being involved or the fact that the victim was uncooperative.

Some of the perception can be explained by looking at the training often provided to law enforcement officers. For example, some of the training provided to law enforcement officers teaches them that any of the following may be indicators of a false report:

- Delayed report.
- Report made to a person other than law enforcement.
- The victim is indifferent to injuries or seems to experience a lack of pain.
- The victim is extremely vague about details of the assault, or is extremely detailed.
- The victim attempts to steer away from unsafe details in the description of the assault, i.e., suspect description or location of offense.

There are huge differences in the estimates given for the rate of false reporting of sexual assault. Studies and surveys range from 0% to 98%. This is not surprising given the differences in definitions and the different ways of determining a complaint to be false and then recording it.

In response to this perception of false allegations, some Rape Crisis Advocates search for a source to counter this argument, often stating that only 2% of reported rapes are false allegations, essentially the same rate as other crimes.

The truth is that the data they are citing doesn't actually exist. In fact, we have no knowledge of what percentage of sexual assaults are false on a national level. The number often cited is from the Crime Index Offenses tracked by the FBI. For example, the 1997 UCR states that, "a higher percentage of complaints of forcible rape are determined 'unfounded' or found by investigation to be false, than for any other Index Crime. While the average of 'unfounded' rates for all Crime Index offenses^[1] was 2% in 1997, 8 percent of the forcible rape complaints were 'unfounded' for the same time frame."^[2]

This paragraph is obviously confusing and is often interpreted by others as though unfounded and false are synonymous. The FBI Guidelines for the Uniform Crime Report are no clearer: "If the investigation shows that no offense occurred nor was attempted, the reported offense can be unfounded for UCR purposes." Although a "false allegation"

is not defined in the UCR, an unfounded allegation is defined as baseless OR false.

When unfounding a case, a law enforcement professional might use a phrase like, "The elements of the crime could not be met or established."

For example: A patrol officer is dispatched to evaluate a sexual assault. The officer speaks to a victim who reports he was sexually assaulted because he believes the suspect should have known that he had not consented to sexual contact beyond fondling. When the detective received the investigation for follow-up, she spoke to the victim who admitted there was no discussion with his partner about what was acceptable nor did the victim ever say no, or resist in any way. When questioned further, the victim could not articulate any fear of force. Based on this information, the detective determined that the elements of forcible sexual assault or rape had not been met. Although it is possible that the crime report could be changed to reflect a less serious offense, i.e., sexual battery, the original charge of rape would appropriately be unfounded.

In some agencies, investigators unfound a case if the investigation doesn't produce evidence to corroborate or substantiate the allegation. I believe this practice is inappropriate; however, I do not necessarily believe there is always malice. The problem may stem from our work in the area of child sexual abuse where cases are closed and reported to state child protection agencies as unfounded, substantiated or unsubstantiated.

For example, in California, these terms are defined in the penal code.

11165.12 of the CA penal code states the following definitions shall control: (a) "Unfounded report" means a report which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165.6 PC.

(continued on page 6)

Guest Columnist

(continued from page 5)

The section goes on to also define a substantiated report. I would like to see something similar adopted for sex crimes. For example, it might read something like:

(a) "Unfounded report" means a report that is determined by a law enforcement agency investigator to be false, to be inherently improbable based on the evidence, or not to constitute a criminal offense as defined in penal code sections (every state would list their specific penal code sections for the applicable sex crimes)

(b) "Substantiated report" means a report which is determined by a law enforcement agency investigator, based upon some credible evidence, to constitute a sex crime as defined in penal code sections....

(c) "Unsubstantiated report" means a report which is determined by a law enforcement agency investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether a crime occurred as defined in penal code sections....

In addition to working with the FBI, the IACP and the National Sheriffs' Association need to establish clear guidelines and definitions for scoring and clearing reports. Investigators also need quality training so that they can learn to recognize and effectively respond to sexual assault.

For example, the following should be included in Sex Crimes Training 101:

- Sexual assault victims will most likely be acquainted with the suspect(s) in some way.
- The victim rarely expected intimacy and the stereotype of date rape rarely applies.
- Suspects rarely use weapons. Their weapon is their betrayal and the victim's confusion, shame and embarrassment.
- Victims normally delay hours, days, weeks, and months in reporting their assault. Many never disclose to anyone, including their closest friends.
- Victims rarely report to law enforcement or authorities first.
- Few victims are injured to the point that emergency medical attention is needed.
- Alcohol and drugs are involved in a high percentage of sexual assaults.

- Victims might lie about the circumstances of the sexual assault because they may feel their actions contributed to the sexual assault or that they won't be believed if the case doesn't fit the stereotype of rape often depicted in the media.
- Professionals responding to sexual assault must reassure the victim that he or she will not be judged and the complaint will be taken seriously.
- Sexual assault victims need validation. This is often more important to them than conviction of the assailant. Regardless of what anyone else in the system does -- the forensic examiner, officer, detective, prosecuting attorney, jury or judge -- each professional has the power to help a person recover from sexual assault.
- No matter how much time and heart the investigator or prosecutor invests in the case, he or she is not the victim. The investigation must be victim centered at all times.
- Professionals will burn out if a victim's inability to participate in an investigation is taken personally or is viewed as a waste of time.

Perhaps most importantly, we need to recognize that there are false allegations of sexual assault. Although good research in this area is severely lacking, I believe the numbers are very low in comparison to property crimes where we see a much higher incidence of fraud, arson, automobile accidents, burglary and theft, for example.

Determining an allegation to be false based on a competent investigation is not a waste of time. Investigators should always be commended for conducting a comprehensive, evidence based investigation. A thorough investigation may exonerate an innocent person rather than leaving doubt in the minds of others. I think this reflects the Criminal Justice System at its best.

Joanne Archambault
Training Director
Sexual Assault Training & Investigation

¹ Part I Index Offenses are Criminal Homicide, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft and Arson
² Crime in the United States, 1997 *Uniform Crime Report*, US Department of Justice, Federal Bureau of Investigation Release Date: Sunday, November 23, 1998, pg. 26

New Federal Crime Victim's Rights

(Continued from page 2)

Department of Justice employees are required to expend their "best efforts" to ensure victims are afforded these rights. Victims are notified that they may be advised by an attorney with regard to their rights. There are specific procedures to

ensure victims are kept informed throughout the investigative, prosecutorial, and corrections phases of the proceedings.

Note that Tribal Nations that have laws substantially equivalent to the provisions of the *Justice for All Act* may be

eligible for grant funds. To view a copy of the text, see www.ojp.usdoj.gov/ovc [select "Justice for All Act"].

Janet S. Strahan
Assistant Victim Witness Coordinator

Indian Country Civil Case Update

United States, et al. v. State of Michigan, et al., U.S. District Court No. 2:73-CV-26.

This lawsuit continues to be actively litigated. As previously summarized in greater length, the United States originally filed the suit in 1973 on behalf of the Bay Mills Indian Community, asserting a continuing treaty-protected right to fish in waters of the Great Lakes adjacent to the lands ceded by the Treaty of March 28, 1836, with the Ottawa and Chippewa Nations of Indians. Ultimately, Bay Mills and four other tribes intervened in the litigation as Plaintiff-Interveners: Sault Ste. Marie Tribe of Chippewa Indians, Little Traverse Bay Bands of Odawa Indians, Little River Band of Ottawa Indians, and Grand Traverse Band of Ottawa and Chippewa Indians.

In the first phase of the case, the court decided that the 1836 Treaty's reservation of usufructuary rights for the Indians encompassed fishing in the Great Lakes, and the parties entered into a consent decree relating to the exercise of those fishing rights. The current, second phase of the case was initiated in November 2003, when the State filed an amended counterclaim seeking a judgment that the Tribes do not retain rights to hunt or fish on inland land and waters (except on federal lands that have never passed out of federal control). The court's decision ultimately will turn on its interpretation of language in the 1836 Treaty stating that the Indians reserved "the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement."

Over the past several months, the parties have been actively engaged in the exchange of written discovery. They also have been working with retained experts in various academic fields (such as linguistics, history, and land use policy and planning), who will assist them in presenting their arguments to the court. The parties have exchanged their initial expert reports and will exchange rebuttal reports in February 2005. Depositions of the experts will take place from February through April 2005, and dispositive motions will be filed by the end of June 2005. If the case is not resolved through motions, a judicial settlement conference will be conducted in December 2005, and, if that conference is unsuccessful, a trial will be held in January 2006.

Jennifer L. McManus
Assistant United States Attorney

For Your Information

Quarterly reports accounting for efforts to reduce violent crime in Indian Country are now required by the Congressional Omnibus Appropriations Act of 2005.

The Department of Justice will provide reports describing what has been done to reduce murder rates, sexual assault of women and children, other serious assaults, domestic violence and child abuse. The required reports will include specific statistics regarding Indian Country Agent Assignment and training provided, investigations initiated, cases prosecuted, convictions secured, and restitution ordered by the court.

Additional funds have been allocated to the FBI to address the investigation and prosecution of cases related to Indian gaming, gangs and violent crime.

Please refer to <http://thomas.loc.gov/home/OMNI/2005/INDEX.htm> and also bill text/joint explanatory statement/HR 4818 or conference report on HR 4818, Consolidated Appropriations Act, 2005 (House of Representatives, November 9, 2004).

Indian Country Criminal Case Updates

United States v. Ronald Carlton (Sault Ste. Marie Tribe of Chippewa Indians - Interstate Travel to Commit Domestic Violence). On August 31, 2004, Ronald Kevin Carlton, age 26, currently of Marquette, Michigan, pled guilty to Interstate Travel to Commit Domestic Violence. The offense carries a maximum penalty of five years in prison followed by three years of supervised release, a fine of not more than \$250,000, a special assessment of \$100, and restitution. At his plea hearing, Carlton admitted traveling to a woman's house and physically assaulting her. The victim and the defendant previously had a domestic relationship. The federal government has jurisdiction in this case because the defendant crossed onto land held in trust for the use of the Sault Ste. Marie Tribe of Chippewa Indians to commit the crime. Sentencing is set for December 21, 2004. AUSA Leslie A. Hagen.

United States v. Dawn Cruickshank (Bay Mills Indian Community - Theft from an Indian Gaming Establishment). On June 2, 2004, Dawn Marie Cruickshank, age 27, of Sault Ste. Marie, Michigan, pled guilty to a federal indictment charging her with Theft from an Indian Gaming Establishment. The offense carries a maximum penalty of ten years in prison followed by three years of supervised release, a fine of \$250,000, a special assessment of \$100, and restitution. As part of her plea, Cruickshank admitted taking \$3,500 for her own benefit from the Bay Mills Resort and Casino by issuing checks on an account in which she knew she did not have sufficient funds. Sentencing is set for December 21, 2004. AUSA Paul D. Lochner.

United States v. Bernard Ferguson (Sault Ste. Marie Tribe of Chippewa Indians - Abusive Sexual Contact). On August 19, 2004, Bernard Roy Ferguson, age 44, of St. Ignace, Michigan, was sentenced in federal court to the maximum six months in jail for his conviction for Abusive Sexual Contact. The assault occurred in October 2002 in Mackinac County on land held in trust for the use of the Sault Ste. Marie Tribe of Chippewa Indians. The victim is an enrolled member of the Sault Ste. Marie Tribe, and the defendant is a non-Indian. AUSA Leslie A. Hagen.

United States v. Tanya Fugett (Bay Mills Indian Community - Supervised Release Violation). On October 8, 2004, Tanya Jean Fugett, age 25, of Sault Ste. Marie, Michigan, was sentenced to six months in jail for violating the terms of her supervised release. At the supervised release hearing, the government proved that Fugett stole from her employer, K-Mart. On May 25, 2004, Fugett was sentenced to two years probation, two hundred hours of community service, and a special assessment of \$100, after she was convicted of Theft from a Tribal Gaming Establishment. The indictment alleged that Fugett knowingly wrote insufficient fund checks to the Bay Mills Resort and Casino. As part of her original sentence, Fugett was ordered to pay \$2,600 in restitution. AUSA Hagen Frank.

United States v. Melissa Matthews (Sault Ste. Marie Tribe of Chippewa Indians - Sexual Abuse of a Minor). On October 21, 2004, Melissa Matthews, age 19, of Kincheloe, Michigan, pled guilty to one count of Sexual Abuse Against a Minor. The offense carries a maximum penalty of fifteen years in prison followed by three years of supervised release, a fine of not more than \$250,000, a special assessment of \$100, and restitution. Matthews also agreed to register as a sexual offender under the laws of the State of Michigan, and she has agreed to be tested for the etiologic agent for acquired immune deficiency syndrome. At her plea hearing, Matthews admitted to engaging in a sex act with a thirteen or fourteen year-old victim. The sex act took place in the victim's home located on land held in trust by the United States for the use of the Sault Ste. Marie Tribe of Chippewa Indians. The victim is a non-Indian and Ms. Matthews is an Indian. Sentencing is set for January 24, 2005. AUSA Leslie A. Hagen.

United States v. Jack Ordway (Bay Mills Indian Community - Sexual Abuse Against a Minor). On November 16, 2004, Jack Arlin Ordway, age 67, currently of Marquette, Michigan, pled guilty to a federal indictment charging him with one count of Sexual Abuse Against a Minor. The offense carries a maximum penalty of fifteen years in prison followed by three years of supervised release, a fine of not more than \$250,000, a special assessment of \$100, and restitution. The defendant also agreed to register as a sexual offender under the laws of the State of Michigan, and he has agreed to be tested for the etiologic agent for acquired immune deficiency syndrome. At his plea hearing, Ordway admitted to engaging in a sex act with a fourteen year-old victim. The sex act took place in August 2004 at a home located on land held in trust by the United States for the use of the Bay Mills Indian Community. The defendant is a non-Indian and the victim is Indian. Sentencing is set for March 28, 2005. AUSA Leslie A. Hagen.

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Indian Country Criminal Case Updates

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United States v. Gary Paul Phillips-Donovan (Hannahville Indian Community - Sexual Abuse of a Minor). On October 21, 2004, Gary Paul Phillips-Donovan, age twenty, of Bark River, Michigan, pled guilty to one count of Sexual Abuse Against a Minor. This offense carries a maximum penalty of fifteen years in prison followed by three years of supervised release, a fine of not more than \$250,000, a special assessment of \$100, and restitution. The defendant also agreed to register as a sexual offender under the laws of the State of Michigan, and he has agreed to be tested for the etiologic agent for acquired immune deficiency syndrome. At his plea hearing, Phillips-Donovan admitted to engaging in a sex act with a twelve year-old victim. The sex act took place on February 27, 2004, at a home located on land held in trust by the United States for the use of the Hannahville-Potawatomi Indian Community. Both the defendant and victim are Indian. Sentencing is set for January 26, 2005. Phillips-Donovan remains jailed pending sentencing. AUSA Leslie A. Hagen.

United States v. Oscar Ramirez, Jr. (Grand Traverse Band - Domestic Violence). On August 23, 2004, Oscar Ramirez, Jr., age 28, of Benzonia, Michigan, was sentenced to the maximum sentence of twelve months in jail for his conviction in federal court for Domestic Violence - Second Offense. The charge is a violation of Michigan law, which becomes a federal offense under the Assimilative Crimes Act when committed in Indian country. After his discharge from jail, Ramirez will remain under the supervision of the court for one-year of supervised release. The assault occurred February 16, 2004, on land held in trust by the United States for the use of the Grand Traverse Band of Ottawa and Chippewa Indians. At his plea hearing, Ramirez acknowledged that he kicked, punched in the head, and bit the victim, a woman with whom Ramirez has children in common. The victim is a tribal member, and the defendant is non-Indian. The defendant had previously been convicted on December 5, 2002, in the 85th Judicial District Court for assaulting the same woman. AUSA Leslie A. Hagen.

United States v. Phillip Sizemore (Hannahville Indian Community - Assault by Wounding).

On September 28, 2004, Phillip E. Sizemore, pled guilty to an Information charging him with Assault by Wounding. The offense carries a maximum penalty of six months in jail, a \$5,000 fine, a mandatory special assessment of \$10, and restitution. The assault occurred on April 3, 2004, on lands held in trust by the United States for use of the Hannahville Indian Community. In his written plea agreement, Sizemore admitted to grabbing the victim and punching her in the head several times near her right eye, grabbing the victim by the arms and holding her down, kicking the victim, and pushing her down in the dirt. At the time of this offense, Sizemore and the victim were living together and involved in a dating relationship. Sentencing is scheduled for January 12, 2005. AUSA Leslie A. Hagen.

United States v. Thomas Teeple (Bay Mills Indian Community - Second Degree Murder). On October 7, 2004, a Federal Grand Jury returned an indictment charging Thomas Donald Teeple, age 27, of Brimley, Michigan, with second degree murder. Teeple is an enrolled member of the Bay Mills Indian Community. Second degree murder is the unlawful killing of a human being with malice aforethought. If convicted of second degree murder, Teeple faces a maximum sentence of life in prison. Teeple is currently being held in the Marquette County jail. The second degree murder charge stems from the death of 23 year-old Jason T. Lyons. Mr. Lyons, an enrolled member of the Bay Mills Indian Community, was fatally stabbed in the heart during the early morning hours of September 10, 2004. The incident leading to Mr. Lyons' death occurred on land held in trust by the United States for the use of the Bay Mills Indian Community. The charges in an indictment are merely accusations, and the defendant is presumed innocent until and unless proven guilty in a court of law. AUSAs Leslie A. Hagen and Mark V. Courtade.

United States v. Tonto Wandahsega (Hannahville-Potawatomi Indian Community - Assault with a Dangerous Weapon). On December 7, 2004, Tonto Wandahsega, age 26, of Wilson, Michigan, pled guilty to a federal information charging him with one count of Assault with a Dangerous Weapon, in violation of Title 18, United States Code, Section 113(a)(3). The offense carries a maximum penalty of ten years in prison followed by three years supervised release, a fine of not more than \$250,000, a special assessment of \$100, and restitution. The charge stems from a February 26, 2004, incident on land held in trust for the use of the Hannahville-Potawatomi Indian Community during which Wandahsega threatened to harm two Hannahville Tribal Police Officers and discharged a firearm. The defendant is an enrolled member of the Hannahville-Potawatomi Indian Community. Sentencing is set for March 14, 2005. Wandahsega remains in custody pending sentencing. AUSAs Leslie A. Hagen and Paul D. Lochner.

Brian P. Lennon
Deputy Criminal Chief
Supervisor of Indian Country Unit

United States Attorney's Office
P.O. Box 208
Grand Rapids, MI 49501

Bedohgeimo

Published by the
United States Attorney's Office,
Western District of Michigan
P.O. Box 208
Grand Rapids, MI 49501

Margaret M. Chiara, United States Attorney

Jeff J. Davis, Assistant United States Attorney
Indian Country Liaison

Leslie A. Hagen, Assistant United States Attorney
Violent Crimes in Indian Country

Kaye D. Hooker, *Law Enforcement Coordinator*

Brian P. Lennon, Assistant United States Attorney
Deputy Criminal Chief, Supervisor of Indian Country

Janet S. Strahan, *Indian Country Victim Witness Coordinator*

Anne E. Towns, *Newsletter Coordinator*